EMERGENCY CONTRACT
(H-CONTRACT)

Contract #: HMA03 Fin. Proj. #: 440557-1-52-01

Mission Reference Number: _____ DDIR Reference Number: MA-73-002

Appropriation Bill Number(s)/Line Item Number(s) for 1st year of contract, pursuant to s. 216.313, F.S.: _____ (required for contracts in excess of $5 million)

Project Worksheet (PW) Number: _____

This contract can only be used during a Governor Declared Emergency and after the Executive Order and suspension of procurement contracting requirements.

This agreement is entered into in accordance with Governor Executive Order # 16-230 dated October 3, 2016, and amendments thereto , Re: Hurricane Matthew (Name of event) and its aftermath.

By this agreement, made and entered into this 23 day of October, 2016, the State of Florida Department of Transportation, hereinafter called "Department" and Halifax Paving, Inc. hereinafter called "Contractor", hereby agree as follows:

1. SERVICES AND PERFORMANCE: In connection with erosion and roadway damage associated with Hurricane Matthew, the Department does hereby retain the Contractor to furnish certain services, information, and items as described in Exhibit A, attached hereto and made a part hereof. All construction related services shall be performed in accordance with the Department's Standard Specifications for Road and Bridge Construction unless authorized in writing by the Department.

2. TERM: The Contractor shall begin work on or before October 24, 2016, and shall complete all work required by this agreement on or before December 8, 2016.

3. COMPENSATION: *(select as appropriate)*

☒ Lump Sum in the amount of $3,955,550.00. *(Choose one method below)*
- ☒ Entire amount upon completion
- ☐ Incrementally as detailed in Exhibit _____
- ☐ Percentage of completion

☐ Unit Prices as described in Exhibit A, Scope of Services / Specification. (Maximum Limiting Amount $_____)
☐ Cost* Plus (Fixed Fee) $_____ (Maximum Limiting Amount $_____)
☐ Cost* Plus _____%. (Maximum Limiting Amount $_____)

*Cost is defined as Direct Salaries including payroll burden, Direct Materials, Direct Subcontracts, and other Direct Expenses.

Invoices for fees or other compensation for services or expenses will be certified by the Contractor and shall be submitted in detail sufficient for a proper preaudit and postaudit thereof. Invoices for travel expenses shall be submitted and paid in accordance with Section 112.061, Florida Statutes. In addition, if compensation for travel is authorized by terms of this Agreement and the Department, then the Department shall not compensate the Contractor for lodging/hotel expenses in excess of $150.00 per day (excluding taxes and fees). The Contractor may expend their own funds to the extent the lodging/hotel expense exceeds $150.00 per day. The Department, in its sole discretion and pursuant to its internal policies and procedures, may approve compensation to the Contractor for lodging/hotel expenses in excess of $150.00 per day.

If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar shall not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. Deliverable(s) must be received and accepted in writing by the Contract Manager on the Department's invoice transmittal forms prior to payment. If the Department determines that the performance of the Vendor is unsatisfactory, the Department shall notify the Vendor of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Vendor shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Vendor will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Vendor shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the vendor resolves the deficiency. If the deficiency is subsequently resolved, the Vendor may bill the Department for the retained amount during the next billing period. If the Vendor is unable to resolve the deficiency, the funds retained may be forfeited at the end of the agreement period.

Records of costs incurred under terms of this agreement shall be maintained and made available upon request to the Department. The Contractor shall permit the Department to perform or have performed an audit of the records of the Contractor and any or all subcontractors to support the compensation paid the Contractor. The audit may be performed as soon as practical after completion and acceptance of the contracted services. The Department shall have the right to deduct from any payment due to the Contractor an amount sufficient to satisfy any amount due and owing the Department by the Contractor under this agreement. Final payment to the Contractor shall be adjusted for audit results. If after completion of the project it is determined that the Department is due a refund of amounts previously paid the Contractor, the Contractor will refund said amount to the Department within 30 days of notification.

4. COMPLIANCE WITH LAWS:
The Contractor shall comply with Chapter 119, Florida Statutes. Specifically, the Contractor shall:

a) Keep and maintain public records required by the Department to perform service.

b) Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

d) Upon completion of the Agreement, transfer, at no cost, to the Department, all public records in possession of the Contractor or keep and maintain public records required by the Department to perform the service. If the Contractor transfers all public records to the Department upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

Failure by the Contractor to comply with Chapter 119, Florida Statutes shall be grounds for immediate unilateral cancellation by the Department.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S/CONTRACTOR'S/VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

District 5

D5publicrecords@dot.state.fl.us

5. TERMINATION AND DEFAULT: This agreement may be canceled by the Department in whole or in part at any time the interest of the Department requires such termination. If this agreement is terminated before performance is completed, the Contractor shall be paid only for that work satisfactorily performed for which costs can be substantiated.

For Contracts $1,000,000 and greater, if the Department determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies with Activities in the Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, the Department shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.

6. ASSIGNMENT AND SUBCONTRACTORS: The Contractor shall not sublet, assign, or transfer any work under this agreement without the prior consent of the Department.

7. INDEMNITY: The Contractor shall indemnify and hold harmless the Department (and the Florida Division of Emergency Management if its funds are involved), its officers and employees from liabilities, damages, losses, and costs, including, but

not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in performance of this agreement.

It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this agreement.

8. ANTI-COLLUSION: The Contractor represents to the Department that no person or persons, firm, or corporation, other than the Contractor, has an interest in this agreement as a principal, and that this agreement is entered into by the Contractor without any collusion with any person, firm, or corporation.

9. FUNDING REQUIREMENTS: (check below, if applicable, and attach form FHWA-1273 "Required Contract Provisions, Federal- Aid Construction Contracts"). The most recent version of this form can be obtained at the following website: http://www.fhwa.dot.gov/programadmin/contracts/1273.htm

☒ The services provided under this agreement involve funding from the Federal Highway Administration (FHWA), and the provisions indicated on form FHWA-1273 are hereby attached and made a part of this agreement.

☒ The services provided under this agreement are subject to the U.S. Department of Labor, Davis Bacon Act and the applicable Federal Wage Rate Tables which are attached and made a part of this agreement.

Any work for which Federal-aid funds are used (including emergency and permanent repairs for ER projects) must comply with applicable Federal regulations. Emergency repairs can be done using negotiated contract or agency force account work as determined by the Highway agency as best suited to protect the public health and safety. However, all Federal contract provisions must still be met for both emergency repairs and permanent repairs.

The Contractor shall comply with the requirements of the National Environmental Policy Act (NEPA) of 1969.

Source of Supply-Steel: Use steel and iron manufactured in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and continuing through the final shaping and coating. If a steel or iron product is taken outside the United States for any manufacturing process, it becomes foreign source material. When using steel or iron materials as a component of any manufactured product (e.g., concrete pipe, prestressed beams, corrugated steel pipe, etc.), these same provisions apply. Foreign steel and iron may be used when the total actual cost of such foreign materials does not exceed 0.1% of the total Contract amount or $2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. Submit a certification from the manufacturer of steel or iron, or any product containing steel or iron, stating that all steel or iron furnished or incorporated into the furnished product was produced and manufactured in the United States or a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at $ (actual cost). Submit each such certification to the Engineer prior to incorporating the material or product into the project. Prior to the use of foreign steel or iron materials on a project, submit invoices to document the actual cost of such material, and obtain the Engineer's written approval prior to incorporating the material into the project.

10. LIABILITY INSURANCE: (check below, if appropriate)
☒ The Contractor shall carry and keep in force during the period of this agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least $1,000,000.00 per person and $5,000,000.00 each occurrence, and property damage insurance of at least $1,000,000.00 each occurrence, for the services to be rendered in accordance with this agreement.

11. BONDS: (check below, if appropriate)
☒ **Performance and Payment Bond:** The contractor will supply to the Department and keep in force a bond provided by a surety authorized to do business in the State of Florida, payable to the Department and conditioned for the prompt, faithful, and efficient performance of this agreement according to the terms and conditions hereof and within the time periods specified herein, and for the prompt payment of all persons furnishing labor, materials, equipment and supplies therefore.

☐ **Payment Bond:** The contractor will supply to the Department and keep in force a bond provided by a surety authorized to do business in the State of Florida, payable to the Department and conditioned for the prompt payment of all persons furnishing labor, materials, equipment and supplies therefore.

The Contractor shall provide the bond to the Department by 10/27/2016, or within 5 days after the execution of this agreement.

12. LOBBYING PROHIBITION: The undersigned certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence either directly or indirectly an officer or employee of any state or federal agency, a member of the Florida Legislature, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-L, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representative of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any persons who fail to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

13. MISCELLANEOUS.

The Department may grant the Vendor's employees or subconsultants access to the Department's secure networks as part of the project. In the event such employees' or subconsultants' participation in the project is terminated or will be terminated, the Vendor shall notify the Department's project manager no later than the employees' or subconsultants' separation date from participation in the project or immediately upon the Vendor acquiring knowledge of such termination of employees' or subconsultants' participation in the project, whichever occurs later.

Invoices are to be mailed to: Florida Department of Transportation, Attn: Jennifer Smith
at this address: 719 South Woodland Blvd. DeLand, Fl 32720

This agreement embodies the whole agreement of the parties.

Attachments: Exhibit A (Scope of Services / Specification)

Added Attachments: Attachments A, B, C, D, E, and F, incorporated and made a part hereof.

CONTRACTOR:

BY: Ted D... Title: PRESIDENT

Contractor Address: 814 HULL RD. ORMOND BEACH, FL 32174 FEID#: 59-1233559

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION:

BY: ... Title: Director of Operations

EMERGENCY CONTRACT
(H-CONTRACT)

EXHIBIT A – SCOPE OF SERVICES / SPECIFICATION (attach additional sheets if necessary)

OBJECTIVE, SCOPE OF SERVICES / SPECIFICATION:
See Attachment A

METHOD OF COMPENSATION: The Contractor shall be paid in accordance with Section 3. Compensation of this agreement and as detailed below: (unit rates, incremental payments, etc.)

See Attachment B

The Contractor shall be fully responsible for the proper billing of any federal reimbursable costs or charges, including those incurred by its contractors and subcontractors.

The Contractor agrees to promptly reimburse the Department for any and all amounts for which the Department has made payment to the Contractor if such amounts become ineligible, disqualified, or disallowed for federal reimbursement due to any act, error, omission, or negligence of the Contractor, including missing or deficient documentation of costs and charges, incomplete or insufficient submittals and/or any other reason declared by FEMA or FHWA.

The Contractor agrees that the Department may offset such amounts from payments due for work or services done under any agreement between the parties if payment from Contractor is not received by the Department after 90 days of written notice from the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.

DOCUMENTATION REQUIREMENTS FOR FHWA – ER AND FEMA REIMBURSEMENT shall include but not be limited to:

Detailed Damage Inspection Report (DDIR)

Attachment A - Scope of Services

Replace the eroded material at various locations along SR A1A caused by Hurricane Matthew in Flagler County within existing roadway stabilization limits in accordance with State of Florida Department of Environmental Protection, Emergency Final Order for Hurricane Matthew, U.S. Army Corps of Engineers NW 3 permit conditions, and U.S. Fish and Wildlife Service Biological Opinion (BO) Log No. 41910-2007-F-0495, attached. The replacement material must be in accordance with FDEP Emergency Final Order, Section 3.a.(2). Material will be placed on a 1:2 maximum slope, compaction efforts are required under the paved roadway and shoulder as per FDOT Standard Specification 120 (in effect as of the time of contract execution). All work shall be performed from the roadway, and no heavy construction equipment is allowed waterward of the toe of the existing revetment (prior to the storm). Finished shoulder surface will be protected with Jute Mat that is seeded with salt tolerant grasses of native varieties. Provide Maintenance of Traffic (MOT) per FDOT Standard Index 600 series. No work may begin until the MOT plans is approved. The contractor will be paid Lump Sum for all work completed. Work must be completed within 45 days. Night work is not permitted due to sea turtle nesting season. FDOT will have a Qualified Biologist on-site daily to ensure compliance with the permits. Prior to beginning work in the beach, the Contractor must wait for all clear from the Department's biologist each morning prior to beginning work on the beach. The contractor may work from the beach, but no equipment is allowed in the water. Equipment will not be allowed in the beach overnight.

SR A1A Roadway Repairs

The current detour set up between S 22nd and S 9th will be modified to run between S 19th St and S 12th St. Reconstruct eroded roadway embankment between S 19st St and S 12th St Roadway Section 73030 M.P. 2.329 to M.P. 3.630 by establishing a typical section for SR A1A as shown in Attachment C.

Repair approximately 1,315 LF of the existing southbound travel lane where the embankment has washed out the embankment past the centerline of A1A between S 21st St and S 9th Street Roadway Section 73030 M.P. 2.329 to M.P. 3.630 at the locations depicted in Attachment D. Specifically repair the damaged pavement starting at the following M.Ps: 2.712 (75' in length), 2.916 (75'), 3.027 (50'), 3.072 (145'), 3.115 (470'), 3.216 (60'), 3.244 (270'), and 3.398 (170'). Use FDOT Design Standard Index 514 Optional Base 6 (B-12.5 required), and 2" of Type SP Structural Course (Traffic C) on a compacted subgrade in accordance with FDOT Standard Specification Section 120. The northbound pavement shall include 12' for travel lane and shoulder and extend an additional 3' to the east for placement of temporary barrier. Overbuild of the temporary northbound lanes may be required for proper drainage as well as proper tie-in to side streets and driveways. Cross slopes can be reversed or reduced upon field verification of necessary conditions and qualifying condition as deemed by the Engineer. Brick driveways locations are to be coordinated with PIO for removal and delivery to property owner.

Construct approximately 6,900 LF of new pavement immediately adjacent and to the west of the existing southbound travel lane of SR A1A between 300 feet north of S 19th St and 12th St Roadway Section 73030 M.P. 2.329 to M.P. 3.630 as depicted in Attachment D. Use FDOT Design Standard Index 514 Optional Base 6, and 2" of Type SP Structural Course (Traffic C) on a compacted subgrade in accordance with FDOT Standard Specification Section 120. For width and cross section details refer to Attachment C.

Re-establish approximately 6,900 LF of temporary revetment along the outside of northbound SR A1A between S 21st St and S 9th St Roadway Section 73030 M.P. 2.329 to M.P. 3.630 as depicted in Attachments C and D. Use FDOT Standard Specification 530 Revetment Systems (Riprap – Bank and Shore Protection). For typical cross section details refer to Attachment C. Salvage all available granite stones and restore in locations where it previously existed, to the extent possible, and construct the remaining areas with coquina stone or granite. Do not mix the stone type in the same area. Must complete revetment in the following areas prior to opening traffic on new pavement: between S 19th St to S 21st St and between S 9th St and S 12th St.

Install approximately 6,900 LF of Temporary Low Profile Concrete Barrier (TLPCB) along the outside (seaward) of the new temporary alignment of SR A1A with its inside edge placed at the center line of existing SR A1A. Use FDOT Design Standard Index 412. TLPCB is to become the property of the Department and remain in place after contract completion. Refer to Attachments C and D. Roadway pavement (existing or new temporary) must extend 3' from centerline of exiting SR A1A.

Install approximately 1,000 LF of Asphalt Curb (painted white meeting FDOT Specification Section 710 for permanent pavement markings) along the left side (landside) of the new temporary alignment of SR A1A with its inside edge placed 24' west of the center line of existing SR A1A. Locations to be determined by the Engineer. Use FDOT Design Standard Index 600 (sheet 10 of 12). Refer to Attachments C and D.

Remove and construct approximately 400 LF of concrete sidewalk along the west side of SR A1A by placing it 1' from the existing right-of-way line between S 21st St and S 9th St Roadway Section 73030 M.P. 2.329 to M.P. 3.630 at the locations depicted in Attachment D and as approved by the Engineer. The new relocated sidewalk shall be 5' wide. Use FDOT Design Standard Index 310.

Shield all existing utility poles located within 6' feet of the proposed edge of travel lane along SR A1A between S 21st St and S 9th St Roadway Section 73030 M.P. 2.329 to M.P. 3.630 with Low Profile Barrier Wall with a minimum of 3 sections of barrier.

Contractor shall replace or repair any missing or damaged street light fixture shields, to match existing, within the project limits.

Contractor shall be responsible for any utility coordination, adjustments and/or relocations.

Contractor shall coordinate with the US Postmaster for temporary relocation of up to 52 mailboxes. See FDOT design standards and standard specifications.

Contractor shall reset, relocate or replace all signage and install new pavement markings for the final condition of the reconstructed SR A1A in accordance with FDOT Design Standards and Standard Specifications. As a minimum the Contractor shall place a double solid yellow line with RPMs along the centerline of the new roadway and single solid white line with RPMs along the two edges of the travel lane. RPM's to be at 40 centers on tangent sections, 5'centers on transitions. The Contractor shall as minimum install four 25 MPH Speed limit regulatory signs in each direction shall be placed along SR A1A prior to opening to traffic. Furnish and install 50 plastic wire mounted waterproof outdoor use double sided yard signs (24"H x 36"W) with business logos for specific businesses at locations directed by the Engineer.

No lane closures or detours will be allowed on SR A1A after roadway is opened to traffic.

Access Management and Maintenance of Traffic

Refer to Access Management Assessment Report included with the Contract Documents.

The following properties along SR A1A were identified with limited or no access:

1) Property ID: 18-12-32-2750-00200-0030

» La Familia Mexican Restaurant; 1916 S Ocean Shore Blvd, Flagler Beach 32136

2) Property ID: 18-12-32-2750-00020-0080

» Residential; 1628 S Ocean Shore Blvd, Flagler Beach 32136

3) Property ID: 18-12-32-2750-00002-0110

» Residential; 1440 S Ocean Shore Blvd, Flagler Beach 32136

4) Property ID: 18-12-32-2750-00001-0050

» Lazy Hours Motel; 1316 S Ocean Shore Blvd, Flagler Beach 32136

5) Property ID: 12-12-31-4500-00190-0101

» Flagler Chiropractic; 1240 S Ocean Shore Blvd, Flagler Beach 32136

6) Property ID: 12-12-31-4500-00190-0100

» Residential; 1242 S Ocean Shore Blvd, Flagler Beach 32136

7) Property ID: 12-12-31-4500-00190-0030

» Topaz Hotel & Island Grill; 1224 S Ocean Shore Blvd, Flagler Beach 32136

therefore, within 48 hours after Notice to Proceed, the contractor shall provide pedestrian and/or vehicular access to the properties identified above during the repair of SR A1A from S 22nd St. to S 8th St. Below are routing options for providing access to the different properties. Residential properties #2 and #3 above are vacant and only require pedestrian and/or vehicular access, within 48 hours, if requested by property owner. The residential property #6 above is located directly behind the Flagler Chiropractic office and must be provided access through the same access point.

1) 1916 S Ocean Shore Blvd (La Familia Mexican Restaurant)

This property is located between S 20th St. and S 19th St.; the property shall gain access through S 19th St. and the alleyway behind the property if the owner takes down their privacy fence. The contractor shall provide pedestrian access along SR A1A from S 19th St. to the property. The contractor shall also provide vehicular access from S 19th St. to the property during the temporary repair of SR A1A.

4) 1316 S Ocean Shore Blvd (Lazy Hours Motel)

This property is located between S 14th St. and S 13th St.; the property currently uses the adjacent lot for storage, pedestrian, and employee access. The contractor shall be responsible for providing pedestrian and vehicular access along SR A1A from S 14th St. to the property.

5) 1240 S Ocean Shore Blvd (Flagler Chiropractic)

This property is located between S 13th St. and S 12th St.; the property uses the backyard of the adjacent lot to gain access. The contractor shall provide pedestrian and vehicular access along SR A1A from S 13th St. to the property.

7) 1224 S Ocean Shore Blvd (Topaz Hotel & Island Grill)

This property is located between S 13th St. and S 12th St.; the property currently has a one-way back entrance used as a circulator for traffic coming in and out. The contractor shall be responsible for providing pedestrian and vehicular access along SR A1A from S 12th St. to the property.

Media Interaction

The contractor, including all sub-contractors, will not provide any information to the media without the expressed written permission of the Department's Debris Project Manager or Public Information Officer. This includes on site interviews requested from any media outlet. All inquiries by a member of the media or any elected official will be directed to the Public Information Officer. The Contractor will ensure this guidance is disseminated to all employees and sub-contractors on the project.

FDOT Standard Index and Standard Specifications

Contractor to follow current FDOT Standard Indices where applicable. Should there be a conflict between this contract document and the FDOT Standard Specifications, this document governs.

Items to Note:

- Performance and Payment Bond is required.
- There will not be any pay adjustments made for asphalt, base, fuel and bituminous material.
- In case of a discrepancy between the straight line diagram and the description in the Scope of Services, the Mile Posts on the straight line diagrams are the correct Mile Posts.
- This project is 45 calendar days. Contractor must start work in the field on Monday, Otober 24, 2016.
- Contractors are responsible for all MOT, which will be in accordance with FDOT Standard Index 600 series. All existing MOT devices, including barrier walls, for road closures and detours will be removed by current contractor (ACME) and replaced by the emergency contractor. This includes the detour routes.
- There is no night time work allowed. Portable Changeable Message Boards will be allowed to stay on at night.

- It will be acceptable to stage equipment on the closed portion of A1A within the paved section. Be considerate to the local businesses, pedestrians and homeowners.
- Contractor is responsible for removing all debris (revetment stones, concrete, wood, asphalt, shingles, etc.) within the project limits including the adjacent beach. Vegetation is to stay.
- Any damage to the existing pavement and vegetation cause by the pursuit of the work must be restored by the contractor at no additional compensation.
- Remove all existing walkways to the beach, except as directed by the Engineer. A list of walkways disposition will be provided prior to Notice to Proceed. Do not remove or alter walkways that are to remain. Hand work will be required in these areas in order to place fill per contract.
- Contractor is hereby notified that other Contractor (Halifax) is working within the northern and southern limits of this project, more specifically from S 22nd to S 19th and from S 12th to S 9th Streets.
- Weather days, Special Event days and/or Holidays will not be granted.
- No construction vehicles are to use detours. Access to the project are through the north and south ends of the project.
- Sidewalks are to meet ADA requirements as required per specifications. Pedestrian traffic to be maintained at all times.
- Include 7,000 lf of silt fence to be placed as directed by the Engineer.
- Typical section indicates toe wall of revetment to be 5'x 5'. As a result of the pre bid meeting, the toe wall will be 3 feet deep and 5 feet wide.

Attachment B

Attachment B – Method of Compensation

This contract will be a lump sum contract to be paid upon successful completion of the work included in this contract.

Incentive for Opening A1A to traffic in both directions

The Department desires to expedite opening A1A to one lane of traffic in both directions to minimize the inconvenience to the traveling public. In order to achieve this, an incentive provision is established for the Contract. The total "incentive payment" shall not exceed $990,990.
The Department will pay the Contractor an "incentive payment" in the amount of $33,333, for each calendar day the actual open to traffic date precedes the Original Contract Time of 45 calendar days and subject to the conditions precedent set forth below. The term "calendar day" as used in this Article will mean every day shown on the calendar. Calendar days will be consecutively counted from commencement of Contract Time regardless of weather, weekends, holidays, suspensions of Contractor's operations, delays or other events as described herein. For purposes of the calculation and the determination of entitlement to the "incentive payment" stated above, the Original Contract Time will not be adjusted for any reason, cause or circumstance whatsoever, regardless of fault, save and except in the instance of a catastrophic event (i.e., hurricane or a declared state of emergency). The parties anticipate that delays may be caused by or arise from any number of events during the course of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of Contractor's operations, or other such events, forces or factors sometimes experienced in highway construction work. Such delays or events and their potential impacts on performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not extend the Original Contract Time for purposes of calculation of the "incentive payment" set forth above. Further, any and all costs or impacts whatsoever incurred by the Contractor in accelerating the Contractor's work to overcome or absorb such delays or events in an effort to complete the Contract prior to expiration of the Original Contract Time, regardless of whether the Contractor successfully does so or not, shall be the sole responsibility of the Contractor in every instance.
No modification of this "Incentive" provision will be considered.
As conditions precedent to the Contractor's entitlement to any "incentive payment" the Contractor must:
(1) Deliver in-hand to the Department any and all claims, in full accordance with 5-12.3 and subject to the limitations therein, no later than 60 calendar days after completion of the work on which such claim is based and tentatively schedule a Disputes Review Board hearing while awaiting Department review and response to any such claim. Furthermore, as to any such 5-12.3 claims for which the Disputes Review Board has determined entitlement, but both parties have not reached an agreement on monetary compensation prior to final acceptance, and also as to those 5-12.3 claims pending at final acceptance, tentatively schedule a Disputes Review Board hearing within 60 calendar days after the final acceptance date while awaiting Department review and response to any such claim. The sole forum for final determination as to both entitlement and amount of monetary compensation, if not otherwise mutually resolved or otherwise agreed, shall be the Disputes Review Board.

(2) Actually complete the Contract and obtain final acceptance by the Department.

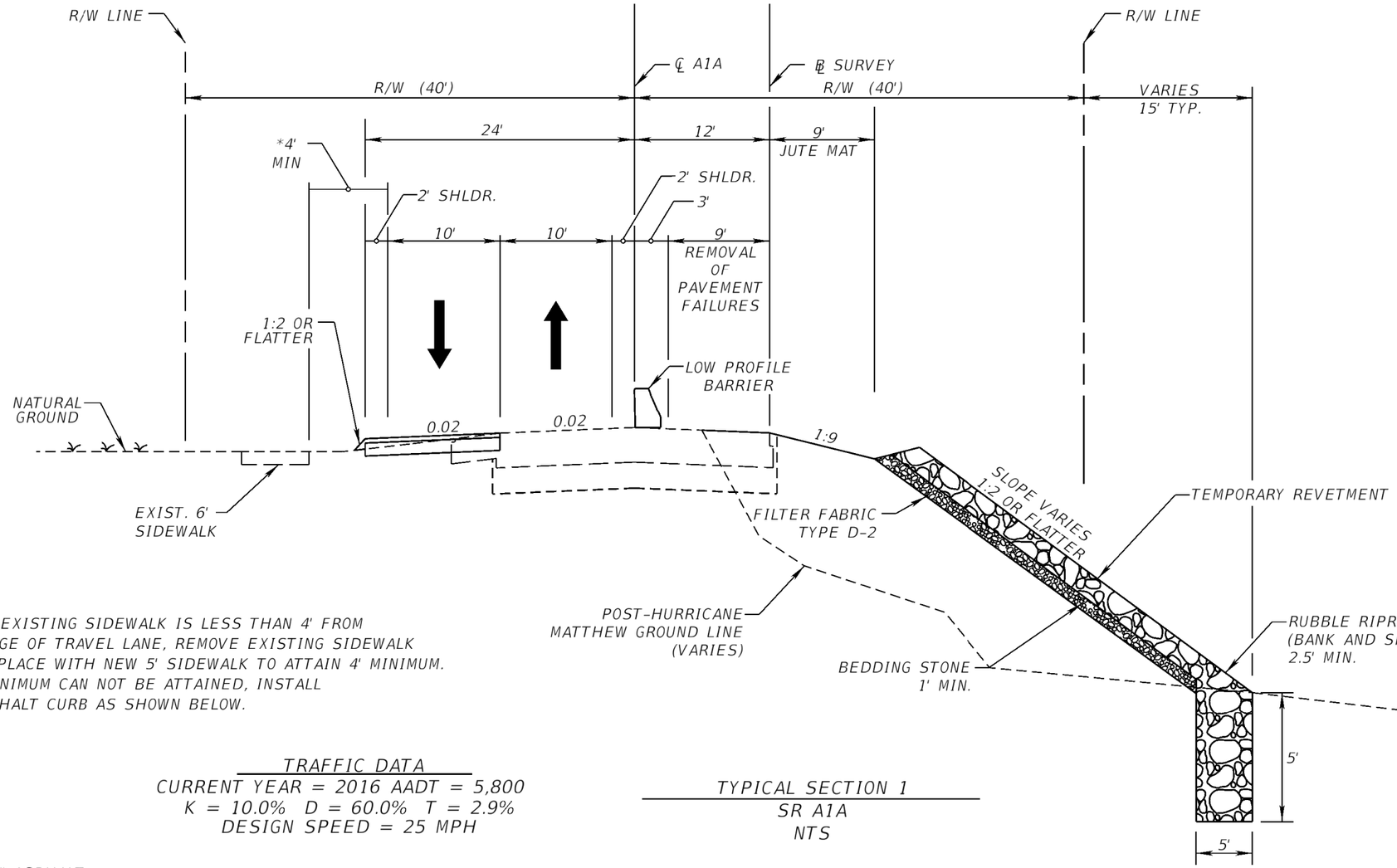
(3) No later than 60 days after final acceptance by the Department, the Contractor must either (a) elect to be paid the "incentive payment" pursuant to (4) below, or (b) notify the Department in writing that the Contractor is electing to be paid the "incentive payment" and is reserving one or more outstanding 5-12.3 claims for final and fully binding determination by the Disputes Review Board. The determinations of the Disputes Review Board as to any such 5-12.3 claims will be fully binding on both the Department and the Contractor, with no right of any kind of challenge, review or appeal, in any forum, by either party. Further, under (b) herein, any previous Disputes Review Board determinations on any such 5-12.3 claims issues shall then be fully binding and not subject to reconsideration by the Disputes Review Board, regardless of whether either party has previously rejected or otherwise not accepted one or more such recommendations at the time such were rendered.

(4) The Contractor shall notify the Department in writing, within 60 days after final acceptance of the Contract by the Department, that the Contractor elects to be paid the "incentive payment" which the Contractor is eligible to be paid based on the actual final acceptance date, and such written notice shall constitute a full and complete waiver, release and acknowledgment of satisfaction by the Contractor of any and all claims, causes of action, issues, demands, disputes, matters or controversies, of any nature or kind whatsoever, known or unknown, against the Department, its employees, officers, agents, representatives, consultants, and their respective employees, officers and representatives, the Contractor has or may have, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, delays, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right of way issues, permitting issues, actions of suppliers or subcontractors or other contractors, actions by third parties, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, suspensions of the Contractor's operations, extended or unabsorbed home office or job site overhead, lump sum maintenance of traffic adjustments, lost profits, prime mark-up on subcontractor work, acceleration costs, any and all direct and indirect costs, any other adverse impacts, events, conditions, circumstances or potential damages, on or pertaining to, or as to or arising out of the Contract. This waiver, release and acknowledgment of satisfaction shall be all-inclusive and absolute, save and except any routine Department final estimating quantity adjustments.

Should the Contractor fail to actually complete the Contract and obtain final acceptance by the Department prior to expiration of the Original Contract Time, or should the Contractor, having timely completed the Contract and obtained final acceptance by the Department prior to expiration of the Original Contract Time but having failed to timely request the "incentive payment" for any reason, and including but not limited to the Contractor choosing not to either reserve one or more outstanding 5-12.3 claims for final and fully binding determination by the Disputes Review Board as set forth in (3)(b) above, or to fully waive, release and acknowledge satisfaction as set forth in (4) above, the Contractor shall have no right to any payment whatsoever under this Article. Article 8-10 relating to liquidated damages remains in effect and is applicable.

In the event the Contractor elects to exercise this "incentive payment" provision, should this provision conflict with any other provision of the Contract, the Contract shall be interpreted in accordance with this provision.

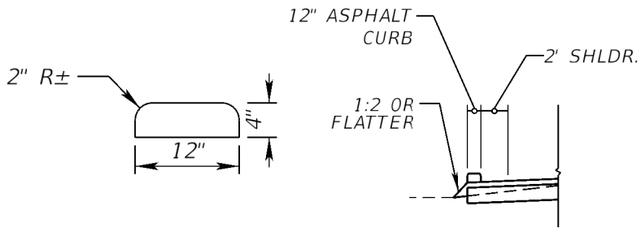
Attachment C



TYPICAL SECTION 1
SR A1A
NTS

* WHERE EXISTING SIDEWALK IS LESS THAN 4' FROM THE EDGE OF TRAVEL LANE, REMOVE EXISTING SIDEWALK AND REPLACE WITH NEW 5' SIDEWALK TO ATTAIN 4' MINIMUM. IF 4' MINIMUM CAN NOT BE ATTAINED, INSTALL 12" ASPHALT CURB AS SHOWN BELOW.

TRAFFIC DATA
CURRENT YEAR = 2016 AADT = 5,800
K = 10.0% D = 60.0% T = 2.9%
DESIGN SPEED = 25 MPH



ASPHALT CURB DETAIL

TEMPORARY PAVEMENT
TYPE SP STRUCTURAL COURSE (2")
OPTIONAL BASE GROUP 6 ON COMPACTED SUBGRADE

SR A1A
EMERGENCY REPAIR
TYPICAL SECTION
ATTACHMENT C

Attachment D

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION			SR A1A EMERGENCY REPAIR PLAN	ATTACHMENT
ROAD NO.	COUNTY	FINANCIAL PROJECT ID		
A1A	FLAGLER	440557-1-52-01		D

Attachment E

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. **Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

General Decision Number: FL160196 05/20/2016 FL196

Superseded General Decision Number: FL20150196

State: Florida

Construction Type: Highway

Counties: Bradford, Citrus, Dixie, Flagler, Hamilton, Taylor and Union Counties in Florida.

HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.15 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/08/2016
1	04/29/2016
2	05/20/2016

* ELEC0349-002 02/29/2016

	Rates	Fringes
ELECTRICIAN	$ 31.11	11.25

SUFL2013-014 08/19/2013

	Rates	Fringes
CARPENTER, Includes Form Work	$ 12.63	0.00
CEMENT MASON/CONCRETE FINISHER	$ 13.19	0.00
FENCE ERECTOR	$ 11.32	0.00
HIGHWAY/PARKING LOT STRIPING: Operator (Striping Machine)	$ 12.63	0.00
HIGHWAY/PARKING LOT STRIPING: Operator (Spray Nozzleman)	$ 10.02	0.00
INSTALLER - GUARDRAIL	$ 14.74	0.00
IRONWORKER, REINFORCING	$ 13.67	0.00

LABORER (Traffic Control Specialist)	$ 10.60	0.00
LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor	$ 10.23	0.00
LABORER: Common or General	$ 9.35	0.00
LABORER: Flagger	$ 9.41	0.00
LABORER: Grade Checker	$ 10.97	0.00
LABORER: Landscape & Irrigation	$ 8.35	0.00
LABORER: Pipelayer	$ 13.34	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 12.21	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 11.61	0.00
OPERATOR: Broom/Sweeper	$ 10.89	0.00
OPERATOR: Bulldozer	$ 14.26	0.00
OPERATOR: Crane	$ 17.83	0.00
OPERATOR: Forklift	$ 10.75	0.00
OPERATOR: Grader/Blade	$ 13.17	0.00
OPERATOR: Loader	$ 11.86	0.00
OPERATOR: Mechanic	$ 12.37	0.00
OPERATOR: Milling Machine	$ 13.57	0.00
OPERATOR: Oiler	$ 11.38	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$ 13.65	0.00
OPERATOR: Post Driver (Guardrail/Fences)	$ 16.00	0.00
OPERATOR: Roller	$ 10.11	0.00
OPERATOR: Screed	$ 13.73	0.00
OPERATOR: Tractor	$ 9.73	0.00
OPERATOR: Trencher	$ 16.00	0.00
SIGN ERECTOR	$ 13.15	0.00
TRAFFIC SIGNALIZATION: Traffic Signal Installation	$ 16.73	0.00

TRUCK DRIVER: Dump Truck.....$ 10.71 0.00

TRUCK DRIVER: Lowboy Truck.....$ 15.24 0.00

TRUCK DRIVER: Water Truck.....$ 12.04 0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and

non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

==========

END OF GENERAL DECISION

Attachment F

United States Department of the Interior
U. S. FISH AND WILDLIFE SERVICE
7915 BAYMEADOWS WAY, SUITE 200
JACKSONVILLE, FLORIDA 32256-7517

IN REPLY REFER TO:
FWS Log. No. 41910-2007-F-0495

July 10, 2009

Mr. Bob Gleason
District Environmental Administrator
Florida Department of Transportation
719 South Woodland Boulevard, MS 501
DeLand, FL 32720

Dear Mr. Gleason:

This document is the U.S. Fish and Wildlife Service's (Service) biological opinion based on our review of the proposed State Road (SR) A1A Shoreline Stabilization from approximately 200-feet south of South 28th Street to 980-feet south of Osprey Point Drive located in Flagler Beach, Florida, and its effects on the threatened loggerhead sea turtle (*Caretta caretta*), endangered green sea turtle (*Chelonia mydas*), and endangered leatherback sea turtle (*Dermochelys coriacea*) per section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.) The Service received your 14 May 2007 request for formal consultation from the Federal Highway Administration (Administration) on 17 May 2007.

This biological opinion is based on information provided in the SR A1A Biological Assessment (May 2007); 9 November 2007 and 28 April 2008 correspondences from Paulette Fiske of CH2M HILL; Dr. Robbin Trindell of the Florida Fish and Wildlife Conservation Commission (Commission); Tony McNeal of the Florida Department of Environmental Protection (State); Bob Gleason, Stephen Tonjes, and Richard Fowler of the Florida Department of Transportation (Department); Andrew Phillips of the U.S. Army Corps of Engineers (Corps); field investigations; and other sources of information. A complete administrative record of this consultation is on file at the Service's St. Petersburg Satellite Office.

Consultation History

This roadway facility, in the immediate vicinity of the City of Flagler Beach, has historically experienced and is currently experiencing severe erosion from natural causes. The consultation area has experienced extensive shoreline hardening actions (i.e. sand and

rock placement) dating back to Hurricane Dora in 1964. The initial granite rock placement between South 7th Street to South 19th Street was permitted by the Florida Department of Natural Resources in December 1981 (FL-14) and April 1985 (FL-44).

On 9 April 2003, the Commission determined the existing road stabilization structures are resulting in "take" of sea turtles through the interference with essential breeding behaviors pursuant to Florida Statute 370.12(1)(f).

On 20 December 2005, the Department, in accordance with F.S. Sections 287.055(3)(a) and 337.11(6), signed a Declaration of Emergency to construct a steel sheeting seawall with a concrete cap to protect and stabilize a portion of the northbound SR A1A travel lane roadway embankment. The roadway had been compromised by severe coastal erosion to such an extent that the health, safety, and welfare of the traveling public was in jeopardy. A detour allowing traffic to continue along SR A1A was established between South 16th Street and South 12th Street diverting traffic to Central Avenue. As a result of this facility failure, a 140-foot seawall was constructed in January 2006 between South 13th Street and South 12th Street (Corps No. SAJ-2005-11010-AWP).

Since that time, the Department's maintenance records indicate emergency and temporary repairs in most years averaging several occurrences per year. It should be noted that any unauthorized activities where the Service did not consult will not be covered in this biological opinion. In 2007 alone, the Department performed 15 emergency or temporary repairs to the facility within the consultation area.

On 14 May 2007, the Service received correspondence from the Administration requesting formal consultation to address scour from the wave action and the erosion of the roadway embankment resulting from stormwater runoff.

On 15 June 2007, the Service requested additional information in a letter to your office.

On 9 November 2007, correspondence was received from representatives of the Department providing additional information not addressed in the SR A1A Biological Assessment.

On 28 January 2008, additional updated information for clarification of high erosion areas was requested.

On 29 April 2008, the additional information requested was received.

On 30 April 2008, correspondence was sent to your office stating all the necessary information was adequate to begin formal consultation.

On 5 September 2008, the Service provided a draft biological opinion at the request of the Department.

On 10 September 2008, the Department requested a 90-day extension to allow their staff adequate time to review the terms and conditions in the draft biological opinion. The Department indicated they would arrange a meeting within the next 30 days to discuss specific recommendations on the terms and conditions with the Service. The Service granted the 90-day extension on this date.

On 2 December 2008, the Service notified the Department the granted 90-day extension would terminate on 11 December 2008 and the anticipated meeting was never scheduled.

On 22 December 2008, the Service met with the Department to explain the biological opinion and discuss the terms and conditions. No resolution occurred with the Department's revised terms and conditions during this meeting. At this point, the Service stated that it would conduct internal discussions on possible revisions to the terms and conditions and update the document to include the 2008 turtle nesting data. The Service stated that consultation would resume after the 2008 nesting data were verified in March of 2009 and incorporated into the biological opinion.

On 26 May 2009, the Service contacted the Department to discuss the unresolved terms and conditions. General agreement was reached. The Department requested a second draft to discuss the revised language internally. In addition, the Department was forwarded an email correspondence regarding a feasibility study the Corps is currently conducting for the area. The assessment will include current conditions, causes of erosion, alternatives for shoreline protection, modeling of the infrastructure, and modeling of waves and storms. The goal of the effort is to determine changes in the infrastructure and predict future outcomes if present conditions remain.

On 6 June 2009, the Service provided a revised draft biological opinion to the Department for their review.

On 30 June 2009, the Service and the Department discussed the latest revisions to the biological opinion. Resolution of all the reasonable and prudent measures and implementing terms and conditions were agreed upon.

BIOLOGICAL OPINION

DESCRIPTION OF PROPOSED ACTION

The study limits extend from approximately 200 feet south of South 28th Street to 980 feet south of Osprey Point Drive, a distance of 5.2 miles. The study area is defined roughly as a 100-foot wide corridor waterward of the eastern edge of pavement of SR A1A roadway, consisting of the edge of roadway, narrow dune, foredune, and beach. The project is oriented from south to north adjacent to the Atlantic Ocean. The facility is within the City of Flagler Beach and continues into the City of Beverly Beach. The proposed project is located in Sections 35 and 36; Township 11 South; Range 31 East; Sections 1 and 12;

Township 12 South; Range 31 East; and Sections 7, 18 and 19; Township 12 South; Range 32 East in Flagler County, Florida.

The Department, in consultation with the Administration, proposes to study and evaluate erosion control systems to stabilize and protect SR A1A from wind and coastal forces, in order to maintain public access and safety while minimizing potential environmental impacts. The proposal requested incidental take for the entire 5.2 miles of the study area. The Department initially identified five areas totaling approximately 1,000 linear feet of shoreline for which erosion is recurring or has recently become problematic. Based on more recent field assessments requested by the Service, eleven areas totaling 4,950-feet of shoreline have been identified. The areas of concern and approximate linear feet are in the following vicinities: South 25th Street (1315 ft.), 2224 South A1A (100 ft.), South 21st Street (300 ft.), South 19th Street (1200 ft.), South 18th Street (100 ft.), South 16th Street (240 ft.), South 14th Street (560 ft.), North 20th Street (370 ft.), 2084 North A1A (385 ft.), North 23rd Street (200 ft.), and 2468 North A1A (180 ft.). These areas, as well as other areas within the proposed study limits, may be considered for future seawall construction should current maintenance efforts be unsuccessful or cost prohibitive.

Depending on the site-specific conditions during or after a severe storm event, one of three erosion control actions may be considered by the Department to stabilize the impacted areas. These proposed measures may be classified as long-term solutions, temporary actions, or emergency repairs:

- Buried Seawall with Sand (long-term solution) - A sheetpile wall with a concrete cap would be buried below the level of the dune crest. The top of the structure would have a suitable substrate conducive for native dune vegetation to proliferate. Sand would be placed in front of the armoring structure,
- Granite Rocks with Sand - Temporary or emergency maintenance of the shoreline through periodic replacement or placement of granite rocks, sand, and native dune vegetation, or
- Coquina Rocks with Sand - Temporary or emergency maintenance of the shoreline through periodic replacement or placement of coquina rocks, sand, and native dune vegetation.

In addition to the armoring of the dune face, stormwater runoff was identified as a recurring issue in 2007 affecting the dune crest and beach along the study corridor. Emergency consultation with the Corps, Department, and Service during the 2007 sea turtle nesting season was in response to erosion caused by stormwater runoff from the roadway. The Department fortifies the dune crests or roadway berms with compatible sand from an off-site source throughout the year, which has ultimately been transported by the roadway runoff and deposited onto the beach. The Service requested the Department address this situation as part of the proposed action. The Department proposed soft armoring with matting to control erosion in areas where roadway runoff threatens to undermine or has undermined the dune crest. Soft armoring is the process by which soft pliable biodegradable matting made of strong coarse fibers such as jute, coir, hemp or burlap is

placed onto the affected surface. The matting is covered with soil or sand compatible with the site material present to create an erosion resistant surface that will support native vegetation. Redirecting or containing the runoff away from the dune is also an option the Department will continue to evaluate.

The Department also proposes to convert the street lights and traffic lights under their jurisdiction within the project area to be in accordance with the Coastal Roadway Lighting Manual, Flagler County's Sea Turtle Lighting Ordinance, and to coordinate with the appropriate jurisdictions to convert other nonconforming lights.

"Take" of sea turtles is expected as a result of interactions sea turtles will have with the construction of emergency armoring structures and the modification or replacement of these temporary armoring structures with permanent armoring structures. The State recognizes the need to protect public infrastructure from damage or destruction caused by coastal erosion (Section 161 Florida Statute and Chapter 62B-33 Florida Administrative Code). In addition, the Corps has determined that it has jurisdiction pursuant to Section 404 of the Clean Water Act (33 U.S.C. §1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403) when emergency armoring is being proposed for construction below the high tide line.

The Service has described the action area to include the Department's entire right-of-way (existing roadway, roadway shoulders), dune crest, beach, and nearshore for reasons that will be explained and discussed in the "Effects of the Action" section of this consultation. The affected area, which extends beyond the Department's jurisdiction, may require the involvement of other stakeholders: local municipalities, Flagler County, City of Flagler Beach, State of Florida, Corps, and National Marine Fisheries Service (NMFS). Areas within the action area, but not within the Department's right-of-way should be part of a multi-governmental approach for long-term beach erosion solutions.

STATUS OF SPECIES/CRITICAL HABITAT

Species/critical habitat description

Loggerhead Sea Turtle

The loggerhead sea turtle was listed as a threatened species on 28 July 1978 (43 FR 32800). The loggerhead occurs throughout the temperate and tropical regions of the Atlantic, Pacific, and Indian Oceans. However, the majority of loggerhead nesting is at the western rims of the Atlantic and Indian Oceans. The species is widely distributed within its range. It may be found hundreds of miles out to sea, as well as inshore areas such as bays, lagoons, salt marshes, creeks, ship channels, and the mouths of large rivers. Coral reefs, rocky places, and ship wrecks are often used as feeding areas. Nesting occurs mainly on open beaches or along narrow bays having suitable sand, and often in association with other species of sea turtles.

Within the continental U.S., loggerheads nest from Texas to Virginia with major nesting concentrations found in South Florida. Additional nesting concentrations occur on coastal islands of North Carolina, South Carolina, and Georgia, and on the Atlantic and Gulf coasts of Florida (NMFS and Service 1991b). Within the western Atlantic, loggerheads also nest in Mexico and the Caribbean.

The loggerhead sea turtle grows to an average weight of about 200 pounds and is characterized by a large head with blunt jaws. Adults and subadults have a reddish-brown carapace. Scales on the top of the head and top of the flippers are also reddish-brown with yellow on the borders. Hatchlings are a dull brown color (NMFS 2002a). The loggerhead feeds on mollusks, crustaceans, fish, and other marine animals.

No critical habitat has been designated for the loggerhead sea turtle.

Green Sea Turtle

The green sea turtle was federally listed as a protected species on 28 July 1978 (43 FR 32800). Breeding populations of the green turtle in Florida and along the Pacific Coast of Mexico are listed as endangered; all other populations are listed as threatened. The green sea turtle has a worldwide distribution in tropical and subtropical waters. Major green turtle nesting colonies in the Atlantic occur on Ascension Island, Aves Island, Costa Rica, and Surinam.

Within the U.S., green turtles nest in small numbers in the U.S. Virgin Islands and Puerto Rico, and in larger numbers along the east coast of Florida, particularly in Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward Counties (NMFS and Service 1991a). Nesting also has been documented along the Gulf coast of Florida from Escambia County through Franklin County in northwest Florida and from Pinellas County through Collier County in southwest Florida (Commission Statewide Nesting Beach Survey [SNBS] program database). Green turtles have been known to nest in Georgia, but only on rare occasions (Georgia Department of Natural Resources statewide nesting database). The green turtle also nests sporadically in North Carolina and South Carolina (North Carolina Wildlife Resources Commission statewide nesting database; South Carolina Department of Natural Resources statewide nesting database). Unconfirmed nesting of green turtles in Alabama has also been reported (Bon Secour National Wildlife Refuge nesting reports).

Green sea turtles are generally found in fairly shallow waters, except when migrating, inside reefs, bays, and inlets. The green turtle is attracted to lagoons and shoals with an abundance of marine grass and algae. Open beaches with a sloping platform and minimal disturbance are required for nesting.

The green sea turtle grows to a maximum size of about 4 feet and a weight of 440 pounds. It has a heart-shaped shell, small head, and single-clawed flippers. The carapace is smooth and colored gray, green, brown and black. Hatchlings are black on top and white on the

bottom (NMFS 2002b). Hatchling green turtles eat a variety of plants and animals, but adults feed almost exclusively on seagrasses and marine algae.

Critical habitat for the green sea turtle has been designated for the waters surrounding Culebra Island, Puerto Rico, and its outlying keys.

Leatherback Sea Turtle

The leatherback sea turtle listed as an endangered species on 2 June 1970 (35 FR 8491), nests on shores of the Atlantic, Pacific and Indian Oceans. Leatherbacks have the widest distribution of sea turtles nesting on beaches in the tropics and sub-tropics with foraging excursions into higher-latitude sub-polar waters. They have evolved physiological and anatomical adaptations (Frair *et al.* 1972, Greer *et al.* 1973) that allow them to exploit waters far colder than any other sea turtle species would be capable of surviving. Non-breeding animals have been recorded as far north as the British Isles and the Maritime Provinces of Canada and as far south as Argentina and the Cape of Good Hope (Pritchard 1992). Nesting grounds are distributed worldwide, with the Pacific Coast of Mexico supporting the world's largest known concentration of nesting leatherbacks. The largest nesting colony in the wider Caribbean region is found in French Guiana, but nesting occurs frequently, although in lesser numbers, from Costa Rica to Columbia and in Guyana, Surinam, and Trinidad (NMFS and Service 1992; National Research Council 1990a).

The leatherback regularly nests in the continental U.S., Puerto Rico, U.S. Virgin Islands, and along the Atlantic coast of Florida as far north as Georgia (NMFS and Service 1992). Leatherback turtles have been known to nest in Georgia, South Carolina, and North Carolina, but only on rare occasions (North Carolina Wildlife Resources Commission; South Carolina Department of Natural Resources; and Georgia Department of Natural Resources statewide nesting databases). With the exception of a few isolated nests along the Gulf coast of Florida (Franklin and Gulf Counties); a single nest in Sarasota County; and a false crawl observed on Sanibel Island, leatherbacks nest almost exclusively on the east coast of Florida (Commission SNBS). In fact, about 50 percent of leatherback nesting occurs in Palm Beach County.

This is the largest, deepest diving of all sea turtle species. The adult leatherback can reach 4 to 8 feet in length and weigh 500 to 2,000 pounds. The carapace is distinguished by a rubber-like texture, about 1.6 inches thick, made primarily of tough, oil-saturated connective tissue. Hatchlings are dorsally mostly black and are covered with tiny scales; the flippers are edged in white, and rows of white scales appear as stripes along the length of the back (NMFS 2002c). Jellyfish are the main staple of their diet, but they are also known to feed on sea urchins, squid, crustaceans, tunicates, fish, blue-green algae, and floating seaweed.

Adult females require sandy-nesting beaches backed with vegetation and sloped sufficiently so the distance to dry sand is limited. Their preferred beaches have proximity to deep water and generally rough seas.

Marine and terrestrial critical habitat for the leatherback sea turtle has been designated at Sandy Point on the western end of the island of St. Croix, U.S. Virgin Islands (50 CFR 17.95).

Life history

Loggerhead Sea Turtle

Loggerheads have a complex life history that encompasses terrestrial, nearshore, and open ocean habitats. The three basic ecosystems in which loggerheads live are the:

1. Terrestrial zone (supralittoral) - the nesting beach where both oviposition (egg laying) and embryonic development and hatching occur.

2. Neritic zone - the inshore marine environment (from the surface to the sea floor) where water depths do not exceed 656 feet (200 meters). The neritic zone generally includes the continental shelf, but in areas where the continental shelf is very narrow or nonexistent, the neritic zone conventionally extends to areas where water depths are less than 656 feet (200 meters).

3. Oceanic zone - the vast open ocean environment (from the surface to the sea floor) where water depths are greater than 656 feet (200 meters).

The generalized life history of Atlantic loggerheads is shown in Figure 1 (from Bolten 2003). The boxes represent life stages and the corresponding ecosystems, solid lines represent movements between life stages and ecosystems, and dotted lines are speculative (Bolten 2003).

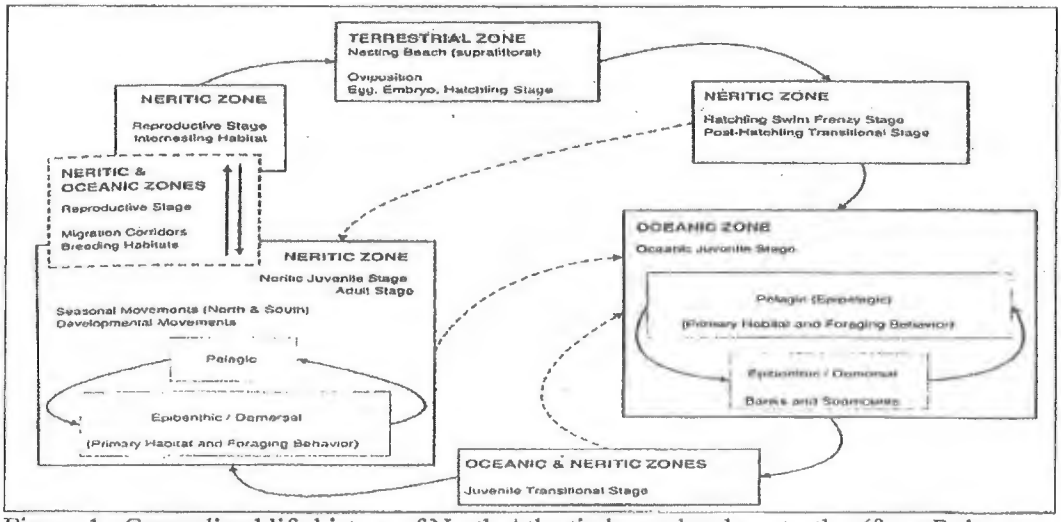


Figure 1. Generalized life history of North Atlantic loggerhead sea turtles (from Bolten 2003).

The numbers of nests and nesting females are often highly variable from year to year due to a variety of factors including environmental stochasticity, periodicity in ocean conditions, anthropogenic effects, density-dependent and density-independent factors affecting survival, somatic growth, and reproduction (Meylan 1982, Hays 2000, Chaloupka 2001, Solow *et al.* 2002). Despite these sources of variation, and because female turtles exhibit strong nest site fidelity, a nesting beach survey can provide a valuable assessment of changes in the adult female population, provided that the study is sufficiently long and effort and methods are standardized (Meylan 1982, Gerrodette and Brandon 2000, Reina *et al.* 2002). Table 1 summarizes key life history characteristics for loggerheads nesting in the U.S.

Table 1. Typical values of life history parameters for loggerheads nesting in the U.S.

Life History Trait	Data
Clutch size (mean)	100-126 eggs[1]
Incubation duration (varies depending on time of year and latitude)	Range = 42-75 days[2,3]
Pivotal temperature (incubation temperature that produces an equal number of males and females)	29.0°C[5]
Nest productivity (emerged hatchlings/total eggs) x 100 (varies depending on site specific factors)	45-70%[2,6]
Clutch frequency (number of nests/female/season)	3-4 nests[7]
Internesting interval (number of days between successive nests within a season)	12-15 days[8]
Juvenile (<87 cm CCL) sex ratio	65-70% female[4]
Remigration interval (number of years between successive nesting migrations)	2.5-3.7 years[9]
Nesting season	late April-early September
Hatching season	late June-early November
Age at sexual maturity	32-35 years[10]
Life span	>57 years[11]

1 Dodd 1988.
2 Dodd and Mackinnon (1999, 2000, 2001, 2002, 2003, 2004).
3 Blair Witherington, Commission, personal communication, 2006 (information based on nests monitored throughout Florida beaches in 2005, n=865).
4 NMFS (2001); Allen Foley, Commission, personal communication, 2005.
5 Mrosovsky (1988).
6 Blair Witherington, Commission, personal communication, 2006 (information based on nests monitored throughout Florida beaches in 2005, n=1,680).

[7] Murphy and Hopkins (1984); Frazer and Richardson (1985); Ehrhart, unpublished data; Hawkes *et al.* 2005; Scott 2006; Tony Tucker, Mote Marine Laboratory, personal communication, 2008.
[8] Caldwell (1962), Dodd (1988).
[9] Richardson *et al.* (1978); Bjorndal *et al.* (1983); Ehrhart, unpublished data.
[10] Melissa Snover, NMFS, personal communication, 2005.
[11] Dahlen *et al.* (2000).

Loggerheads nest on ocean beaches and occasionally on estuarine shorelines with suitable sand. Nests are typically laid between the high tide line and the dune front (Routa 1968, Witherington 1986, Hailman and Elowson 1992). Wood and Bjorndal (2000) evaluated four environmental factors (slope, temperature, moisture, and salinity) and found that slope had the greatest influence on loggerhead nest site selection on a beach in Florida. Loggerheads appear to prefer relatively narrow, steeply sloped, coarse-grained beaches, although nearshore contours may also play a role in nesting beach site selection (Provancha and Ehrhart 1987).

Sea turtle eggs require a high-humidity substrate that allows for sufficient gas exchange for development (Miller 1997, Miller *et al.* 2003). Loggerhead nests incubate for variable periods of time. The length of the incubation period (commonly measured from the time of egg deposition to hatchling emergence) is inversely related to nest temperature, such that between 26°C and 32°C, a change of 1°C adds or subtracts approximately 5 days (Mrosovsky 1980).

The warmer the sand surrounding the egg chamber, the faster the embryos develop (Mrosovsky and Yntema 1980). Sand temperatures prevailing during the middle third of the incubation period also determine the sex of hatchling sea turtles (Mrosovsky and Yntema 1980). Incubation temperatures near the upper end of the tolerable range produce only female hatchlings while incubation temperatures near the lower end of the tolerable range produce only male hatchlings. The pivotal temperature (i.e., the incubation temperature that produces equal numbers of males and females) in loggerheads is approximately 29°C (Limpus *et al.* 1983, Mrosovsky 1988, Marcovaldi *et al.* 1997). However, clutches with the same average temperature may have different sex ratios depending on the fluctuation of temperature during incubation (Georges *et al.* 1994). Moisture conditions in the nest similarly influence incubation period, hatching success, and hatchling size (McGehee 1990, Carthy *et al.* 2003).

Loggerhead hatchlings pip and escape from their eggs over a 1 to 3 day interval and move upward and out of the nest over a 2 to 4 day interval (Christens 1990). The time from pipping to emergence ranges from 4 to 7 days with an average of 4.1 days (Godfrey and Mrosovsky 1997). Hatchlings emerge from their nests en masse almost exclusively at night, and presumably using decreasing sand temperature as a cue (Hendrickson 1958, Mrosovsky 1968, Witherington *et al.* 1990). Moran *et al.* (1999) concluded that a lowering of sand temperatures below a critical threshold, which most typically occurs after nightfall, is the most probable trigger for hatchling emergence from a nest. After an initial emergence, there may be secondary emergences on subsequent nights (Carr and Ogren 1960, Witherington 1986, Ernest and Martin 1993, Houghton and Hays 2001).

Hatchlings use a progression of orientation cues to guide their movement from the nest to the marine environments where they spend their early years (Lohmann and Lohmann 2003). Hatchlings first use light cues to find the ocean. On naturally lighted beaches without artificial lighting, ambient light from the open sky creates a relatively bright horizon compared to the dark silhouette of the dune and vegetation landward of the nest. This contrast guides the hatchlings to the ocean (Daniel and Smith 1947, Limpus 1971, Salmon *et al.* 1992, Witherington and Martin 1996, Witherington 1997, Stewart and Wyneken 2004).

Green Sea Turtle

Green turtles deposit from one to nine clutches within a nesting season, but the overall average is about 3.3 nests. The interval between nesting events within a season varies around a mean of about 13 days (Hirth 1997). Mean clutch size varies widely among populations. Average clutch size reported for Florida was 136 eggs in 130 clutches (Witherington and Ehrhart 1989). Only occasionally do females produce clutches in successive years. Usually two, three, four or more years intervene between breeding seasons (NMFS and Service 1991a). Age at sexual maturity is believed to be 20 to 50 years (Hirth 1997). Green turtle nesting in Florida typically commences in late May and terminates in September; incubation for the hatchlings is between 45 to 75 days (Meylan 2006).

Leatherback Sea Turtle

Leatherbacks nest an average of five to seven times within a nesting season, with an observed maximum of 11 nests (NMFS and Service 1992). The interval between nesting events within a season is about 9 to 10 days. Clutch size averages 80 to 85 yolked eggs, with the addition of usually a few dozen smaller, yolkless eggs, mostly laid toward the end of the clutch (Pritchard 1992). Nesting migration intervals of 2 to 3 years were observed in leatherbacks nesting on the Sandy Point National Wildlife Refuge, St. Croix, and U.S. Virgin Islands (McDonald and Dutton 1996). Leatherbacks are believed to reach sexual maturity in 6 to 10 years (Zug and Parham 1996). Florida leatherback turtle nesting usually initiates in March and concludes in June; hatchling emergence ranges from 55 days to 75 days (Meylan 2006).

Population dynamics

Loggerhead Sea Turtle

The loggerhead is commonly found throughout the North Atlantic including the Gulf of Mexico, the northern Caribbean, the Bahamas archipelago, and eastward to West Africa, the western Mediterranean, and the west coast of Europe.

The major nesting concentrations in the U.S. are found in South Florida. However, loggerheads nest from Texas to Virginia. Total estimated nesting in the U.S. has fluctuated

between 47,000 and 90,000 nests per year over the last decade (Commission, unpublished data; GDNR, unpublished data; SCDNR, unpublished data; NCWRC, unpublished data). About 80 percent of loggerhead nesting in the southeast U.S. occurs in six Florida counties (Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward Counties). Adult loggerheads are known to make considerable migrations between foraging areas and nesting beaches (Schroeder *et al.* 2003, Foley *et al.* 2008). During non-nesting years, adult females from U.S. beaches are distributed in waters off the eastern U.S. and throughout the Gulf of Mexico, Bahamas, Greater Antilles, and Yucatán.

From a global perspective, the U.S. nesting aggregation is of paramount importance to the survival of the species and is second in size only to that which nests on islands in the Arabian Sea off Oman (Ross 1982, Ehrhart 1989). The status of the Oman loggerhead nesting population, reported to be the largest in the world (Ross 1979), is uncertain because of the lack of long-term standardized nesting or foraging ground surveys and its vulnerability to increasing development pressures near major nesting beaches and threats from fisheries interaction on foraging grounds and migration routes (E. Possardt, Service, personal communication 2005).

Green Sea Turtle

About 150 to 3,000 females are estimated to nest on beaches in the continental U.S. annually (Commission 2005). In the U.S. Pacific, over 90 percent of nesting throughout the Hawaiian archipelago occurs at the French Frigate Shoals, where about 200 to 700 females nest each year (NMFS and Service 1998a). Elsewhere in the U.S. Pacific, nesting takes place at scattered locations in the Commonwealth of the Northern Marianas, Guam, and American Samoa. In the western Pacific, the largest green turtle nesting aggregation in the world occurs on Raine Island, Australia, where thousands of females nest nightly in an average nesting season (Limpus *et al.* 1993). In the Indian Ocean, major nesting beaches occur in Oman where 30,000 females are reported to nest annually (Ross and Barwani 1995).

Leatherback Sea Turtle

The most recent population size estimate for the North Atlantic alone is in a range of 34,000-94,000 adult leatherbacks (Turtle Expert Working Group 2007). Since 1989, a significant increase in the number of leatherback nests has been documented in Florida. The reasons for this increase are not known, but the trend is welcome because many of other leatherback nesting aggregations are in serious decline.

Nesting in the Southern Caribbean occurs in the Guianas (Guyana, Suriname, and French Guiana), Trinidad, Dominica, and Venezuela. The largest nesting populations at present occur in the western Atlantic in French Guiana with nesting varying between approximately 5,029 and 63,294 nests between 1967 and 2005 (Turtle Expert Working Group 2007). Trinidad supports an estimated 6,000 leatherbacks nesting annually, which represents more than 80 percent of the nesting in the insular Caribbean Sea. Leatherback nesting along the

Caribbean Central American coast takes place between the Honduras and Colombia. In Atlantic Costa Rica, at Tortuguero the number of nests laid annually between 1995 and 2006 was estimated to range from 199-1,623; modeling of these data indicated that the nesting population has decreased by 67.8 percent over this time period.

In Puerto Rico, the main nesting areas are at Fajardo on the main island of Puerto Rico and on the island of Culebra. Between 1978 and 2005, nesting increased in Puerto Rico with a minimum of 9 nests recorded in 1978 and a minimum of 469-882 nests recorded each year between 2000 and 2005. Recorded leatherback nesting on the Sandy Point National Wildlife Refuge on the island of St. Croix, U.S. Virgin Islands between 1990 and 2005, ranged from a low of 143 in 1990 to a high of 1,008 in 2001. In the British Virgin Islands, annual nest numbers have increased in Tortola from 0-6 nests per year in the late 1980s to 35-65 nests per year in the 2000s.

Status and distribution

Loggerhead Sea turtle

Nesting occurs within the Northwest Atlantic along the coasts of North America, Central America, northern South America, the Antilles, Bahamas, and Bermuda, but is concentrated in the southeastern U.S. and on the Yucatan Peninsula in Mexico (Sternberg 1981, Ehrhart 1989, Ehrhart *et al.* 2003, NMFS and Service 2008). Five recovery units (subpopulations) have been identified based on genetic differences and a combination of geographic distribution of nesting densities and geographic separation. These recovery units are: Northern Recovery Unit, Peninsular Florida Recovery Unit, Northern Gulf of Mexico Recovery Unit, Greater Caribbean Recovery Unit (including Quintana Roo, Mexico) and Dry Tortugas Recovery Unit (NMFS and Service 2008).

The Northern Recovery Unit (NRU) is the second largest loggerhead nesting aggregation in the Northwest Atlantic. Annual nest totals from northern beaches averaged 5,215 nests from 1989-2008, a period of near-complete surveys of NRU nesting beaches (Georgia Department of Natural Resources, unpublished data; North Carolina Wildlife Resources Commission, unpublished data; South Carolina Department of Natural Resources, unpublished data), representing approximately 1,272 nesting females per year (4.1 nests per female, Murphy and Hopkins 1984). The loggerhead nesting trend from daily beach surveys showed a significant decline of 1.3% annually. Nest totals from aerial surveys conducted by South Carolina Department of Natural Resources showed a 1.9% annual decline in nesting in South Carolina since 1980. Overall, there is a strong statistical data to suggest the NRU has experienced a long-term decline.

The Peninsular Florida Recovery Unit (PFRU) is the largest loggerhead nesting assemblage in the Northwest Atlantic. A near-complete nest census of the PFRU undertaken from 1989 to 2007 reveals a mean of 64,513 loggerhead nests per year representing approximately 15,735 females nesting per year (4.1 nests per female, Murphy and Hopkins 1984) (Commission, unpublished data). This near-complete census provides the best statewide

estimate of total abundance, but because of variable survey effort, these numbers cannot be used to assess trends. Loggerhead nesting trends are best assessed using standardized nest counts made at Index Nesting Beach Survey (INBS) sites surveyed with constant effort over time. An analysis of these data has shown a decline in nesting from 1989-2008 (Witherington *et al.* 2009). The analysis that reveals this decline uses nest-count data from 345 representative Atlantic-coast index zones (total length = 301 km) and 23 representative zones on Florida's southern Gulf coast (total length = 23 km). The spatial and temporal coverage (annually, 109 days and 368 zones) accounted for an average of 70% of statewide loggerhead nesting activity between 1989 and 2008. Negative binomial regression models that fit restricted cubic spline curves to aggregated nest-counts were used in trend evaluations. Results of the analysis indicated that there had been a decrease of 26% over the 20-year period and a 41% decline since 1998. The mean annual rate of decline for the 20-year period was 1.6%.

The Northern Gulf of Mexico Recovery Unit (NGMRU) is the third largest nesting assemblage among the four U.S. recovery units. Nesting surveys conducted on approximately 300 km of beach within the NGMRU (Alabama and Florida only) were undertaken between 1995 and 2007 (statewide surveys in Alabama began in 2002). The mean nest count during this 13-year period was 906 nests per year, which equates to about 221 females nesting per year (4.1 nests per female, Murphy and Hopkins 1984) (Commission, unpublished data). Evaluation of long-term nesting trends for the NGMRU is difficult because of changed and expanded beach coverage. Loggerhead nesting trends are best assessed using standardized nest counts made at INBS sites surveyed with constant effort over time. There are 12 years (1997-2008) of Florida INBS data for the NGMRU (Commission, unpublished data). A log-linear regression showed a significant declining trend of 4.7% annually.

The Dry Tortugas Recovery Unit (DTRU), located west of the Florida Keys, is the smallest of the identified recovery units. A near-complete nest census of the DTRU undertaken from 1995 to 2004, excluding 2002, (9 years surveyed) reveals a mean of 246 nests per year, which equates to about 60 females nesting per year (4.1 nests per female, Murphy and Hopkins 1984) (Commission, unpublished data). Surveys after 2004 did not include principal nesting beaches within the recovery unit (i.e., Dry Tortugas National Park). The nesting trend data for the DTRU are from beaches that are not part of the INBS program but are part of the Statewide Nesting Beach Survey (SNBS) program. There are 9 years of data for this recovery unit. A simple linear regression accounting for temporal autocorrelation revealed no trend in nesting numbers. Because of the annual variability in nest totals, a longer time series is needed to detect a trend.

The Greater Caribbean Recovery Unit (GCRU) is composed of all other nesting assemblages of loggerheads within the Greater Caribbean. Statistically valid analysis of long-term nesting trends for the entire GCRU are not available because there are few long-term standardized nesting surveys representative of the region. Additionally, changing survey effort at monitored beaches and scattered and low-level nesting by loggerheads at many locations currently precludes comprehensive analyses. The most complete data are from Quintana Roo, Yucatan, Mexico, where an increasing trend was reported over a 15-

year period from 1987-2001 (Zurita *et al.* 2003). However, nesting since 2001 has declined and the previously reported increasing trend appears not to have been sustained (Julio Zurita, personal communication, 2006). Other smaller nesting populations have experienced declines over the past few decades (e.g., Amorocho 2003).

Recovery Criteria

Demographic Recovery Criteria:

1. Number of Nests and Number of Nesting Females

a. Northern Recovery Unit

(1) There is statistical confidence (95%) that the annual rate of increase over a generation time of 50 years is 2% or greater resulting in a total annual number of nests of 14,000 or greater for this recovery unit (approximate distribution of nests is NC=14% [2,000], SC=66% [9,200], and GA=20% [2,800]).
(2) This increase in number of nests must be a result of corresponding increases in number of nesting females (estimated from nests, clutch frequency, and remigration interval).

b. Peninsular Florida Recovery Unit

(1) There is statistical confidence (95%) that the annual rate of increase over a generation time of 50 years is statistically detectable (1%) resulting in a total annual number of nests of 106,100 or greater for this recovery unit.
(2) This increase in number of nests must be a result of corresponding increases in number of nesting females (estimated from nests, clutch frequency, and remigration interval).

c. Dry Tortugas Recovery Unit

(1) There is statistical confidence (95%) that the annual rate of increase over a generation time of 50 years is 3% or greater resulting in a total annual number of nests of 1,100 or greater for this recovery unit.
(2) This increase in number of nests must be a result of corresponding increases in number of nesting females (estimated from nests, clutch frequency, and remigration interval).

d. Northern Gulf of Mexico Recovery Unit
(1) There is statistical confidence (95%) that the annual rate of increase over a generation time of 50 years is 3% or greater resulting in a total annual number of nests of 4,000 or greater for this recovery unit (approximate distribution of nests (2002-2007) is FL= 92% [3,700] and AL=8% [300]).

(2) This increase in number of nests must be a result of corresponding increases in number of nesting females (estimated from nests, clutch frequency, and remigration interval).

e. Greater Caribbean Recovery Unit

(1) The total annual number of nests at a minimum of three nesting assemblages, averaging greater than 100 nests annually (e.g., Yucatán, Mexico; Cay Sal Bank, The Bahamas) has increased over a generation time of 50 years.
(2) This increase in number of nests must be a result of corresponding increases in number of nesting females (estimated from nests, clutch frequency, and remigration interval).

2. Trends in Abundance on Foraging Grounds

A network of in-water sites, both oceanic and neritic, distributed across the foraging range is established and monitoring is implemented to measure abundance. There is statistical confidence (95%) that a composite estimate of relative abundance from these sites is increasing for at least one generation.

3. Trends in Neritic Strandings Relative to In-water Abundance

Stranding trends are not increasing at a rate greater than the trends in in-water relative abundance for similar age classes for at least one generation.

Listing Factor Recovery Criteria:

1. Present or Threatened Destruction, Modification, or Curtailment of a Species Habitat or Range

a. Terrestrial

(1) Beach armoring, shoreline stabilization structures, and all other barriers to nesting are categorized and inventoried for areas under U.S. jurisdiction. A peer-reviewed strategy is developed and implemented to ensure that the percentage of nesting beach free of barriers to nesting is stable or increasing relative to baseline levels.
(2) Beach sand placement projects conducted in areas under U.S. jurisdiction are in compliance with state and FWS criteria and are conducted in a manner that accommodates loggerhead needs and does not degrade or eliminate nesting habitat.
(3) At least 1,581 km of loggerhead nesting beaches and adjacent uplands (current amount as identified in Appendix 4) under U.S. jurisdiction are maintained within conservation lands in public (Federal, state, or local) or private (NGO and private conservation lands) ownership that are managed in a manner compatible with sea turtle nesting.

(4) A peer-reviewed model is developed that describes the effects of sea level rise on loggerhead nesting beaches, and steps have been taken to mitigate such effects.
(5) Nesting beaches outside U.S. jurisdiction are managed for compatibility with loggerhead nesting.

b. Marine (estuarine, neritic, and oceanic)

A peer-reviewed, comprehensive strategy is developed and implemented to identify, prioritize, and protect marine habitats (e.g., feeding, migratory, inter-nesting) important to loggerheads.

2. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

a. Legal harvest (both commercial and subsistence) in the Caribbean, Atlantic, and Mediterranean is identified and quantified. A strategy is developed and implemented to eliminate legal harvest through international agreements.

b. A scientifically based nest management plan outlining strategies for protecting nests (under U.S. jurisdiction) from natural and manmade impacts is developed and implemented.

3. Disease or Predation

a. Ecologically sound predator control programs are implemented to ensure that the annual rate of mammalian predation on nests (under U.S. jurisdiction) is 10% or below within each recovery unit based on standardized surveys.

b. A peer-reviewed strategy is developed to recognize, respond to, and investigate mass/unusual mortality or disease events.

4. Inadequacy of Existing Regulatory Mechanisms

a. Light management plans, which meet minimum standards identified in the Florida Model Lighting Ordinance (Florida Administrative Code Rule 62B-55), are developed, fully implemented, and effectively enforced on nesting beaches under U.S. jurisdiction. Annual percentage of total nests with hatchlings disoriented or misoriented by artificial lighting does not exceed 10% based on standardized surveys.

b. Specific and comprehensive Federal legislation is developed, promulgated, implemented, and enforced to ensure long-term (including post-delisting) protection of loggerheads and their terrestrial and marine habitats, including protection from fishery interactions.

c. State and local legislation is developed and/or maintained, promulgated, implemented, and enforced to ensure long-term (including post-delisting) protection of loggerheads and their terrestrial and marine habitats, including protection from fishery interactions.

d. Foreign nations with significant loggerhead foraging or migratory habitat have implemented national legislation and have acceded to international and multi-lateral agreements to ensure long-term protection of loggerheads and their habitats. Nations that have important foraging or migratory habitat include Canada, Mexico, Cuba, The Bahamas, Turks and Caicos Islands, Nicaragua, Panama, Colombia, Spain, Portugal, Morocco, and Cape Verde Islands.

e. Nations that conduct activities affecting loggerheads in foraging or migratory habitats in the North Atlantic Basin and the western Mediterranean have implemented national legislation and have acceded to international and multi-lateral agreements to ensure long-term protection of loggerheads and their habitats throughout the high seas and in foreign EEZs.

5. Other Natural or Manmade Factors Affecting Its Continued Existence

a. A peer-reviewed strategy is developed and fully implemented to minimize fishery interactions and mortality for each domestic commercial fishing gear type that has loggerhead bycatch.

b. A peer-reviewed strategy is developed and fully implemented in cooperation with relevant nations to minimize fishery interactions and mortality of loggerheads in foreign EEZs and on the high seas.

c. A peer-reviewed strategy is developed and fully implemented to quantify, monitor, and minimize effects of trophic changes on loggerheads (e.g., diet, growth rate, fecundity) from fishery harvests and habitat alterations.

d. A peer-reviewed strategy is developed and fully implemented to quantify, monitor, and minimize the effects of marine debris ingestion and entanglement in U.S. territorial waters, the U.S. EEZ, foreign EEZs, and the high seas.

e. A peer-reviewed strategy is developed and fully implemented to minimize vessel strike mortality in U.S. territorial waters and the U.S. EEZ.

The current "Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle (*Caretta caretta*)" was completed in 2008, and the "Recovery Plan for U.S. Pacific Populations of the Loggerhead Turtle (*Caretta caretta*)" was completed in 1998. The recovery criteria contained in the U.S. Pacific plan, while not strictly adhering to all elements of the Recovery Planning Guidelines (Service and NMFS), are a viable measure of the species status.

Green Sea Turtle

Nesting data collected as part of the SNBS program (2000-2006) with the purpose of documenting total distribution, seasonality, and abundance of sea turtle nesting, show that a mean of approximately 5,600 nests are laid each year in Florida. Nesting occurs in 26 counties with a peak along the east coast, from Volusia through Broward Counties. The green turtle nesting population of Florida is increasing based on 20 years (1989-2008) of INBS program data from throughout the state. Fewer nests were recorded in 2008 than in 2007, but this did not change the long-term increasing trend. In 2007, the number of green turtle nests on index beaches was the highest since the trend-monitoring program began in 1989.

The increase in nesting in Florida is likely a result of several factors, including: (1) a Florida Statute enacted in the early 1970s that prohibited the killing of green turtles in Florida; (2) the species listing under the ESA in 1973, affording complete protection to eggs, juveniles, and adults in all U.S. waters; (3) the passage of Florida's constitutional net ban amendment in 1994 and its subsequent enactment, making it illegal to use any gillnets or other entangling nets in state waters; (4) the likelihood that the majority of Florida adult green turtles reside within Florida waters where they are fully protected; (5) the protections afforded Florida green turtles while they inhabit the waters of other nations that have enacted strong sea turtle conservation measures (e.g., Bermuda); and (6) the listing of the species on Appendix I of CITES, which stopped international trade and reduced incentives for illegal trade from the U.S.

Recovery Criteria

The U.S. Atlantic population of green sea turtles can be considered for delisting when, over a period of 25 years the following conditions are met:

1. The level of nesting in Florida has increased to an average of 5,000 nests per year for at least six years. Nesting data shall be based on standardized surveys.

2. At least 25 percent (65 miles) of all available nesting beaches (260 miles) are in public ownership and encompass at least 50 percent of the nesting activity.

3. A reduction in stage class mortality is reflected in higher counts of individuals on foraging grounds.

4. All priority one tasks identified in the recovery plan have been successfully implemented.

The current "Recovery Plan for the U.S. Population of Atlantic Green Turtle (*Chelonia mydas*)" was completed in 1991, the "Recovery Plan for U.S. Pacific Populations of the Green Turtle (*Chelonia mydas*)" was completed in 1998, and the "Recovery Plan for U.S.

Pacific Populations of the East Pacific Green Turtle (*Chelonia mydas*)" was completed in 1998. The recovery criteria contained in the plans, while not strictly adhering to all elements of the Recovery Planning Guidelines (Service and NMFS), are a viable measure of the species status.

Leatherback Sea Turtle

Declines in leatherback nesting have occurred over the last two decades along the Pacific coasts of Mexico and Costa Rica. The Mexican leatherback nesting population, once considered to be the world's largest leatherback nesting population (historically estimated to be 65 percent of worldwide population), is now less than one percent of its estimated size in 1980. Spotila *et al.* (1996) estimated the number of leatherback sea turtles nesting on 28 beaches throughout the world from the literature and communications with investigators studying those beaches. The estimated worldwide population of leatherbacks in 1995 was about 34,500 females on these beaches with a lower limit of about 26,200 and an upper limit of about 42,900. This is less than one third the 1980 estimate of 115,000. Leatherbacks are rare in the Indian Ocean and in very low numbers in the western Pacific Ocean. The largest population is in the western Atlantic. Using an age-based demographic model, Spotila *et al.* (1996) determined that leatherback populations in the Indian Ocean and western Pacific Ocean cannot withstand even moderate levels of adult mortality and that even the Atlantic populations are being exploited at a rate that cannot be sustained. They concluded that leatherbacks are on the road to extinction and further population declines can be expected unless action is taken to reduce adult mortality and increase survival of eggs and hatchlings.

In the U.S., nesting populations occur in Florida, Puerto Rico, and the U.S. Virgin Islands. In Florida, the SNBS program has documented an increase in leatherback nesting numbers from 98 nests in 1988 to between 800 and 900 nests per season in the early 2000s (Commission SNBS; Stewart and Johnson 2006). Although the SNBS program provides information on distribution and total abundance statewide, it cannot be used to assess trends because of variable survey effort. Therefore, leatherback nesting trends are best assessed using standardized nest counts made at INBS sites surveyed with constant effort over time (1989-2008). An analysis of the INBS data has shown a substantial increase in leatherback nesting in Florida since 1989 (Commission INBS; Turtle Expert Working Group 2007). Similar to the green sea turtles, fewer nests were recorded in 2008 than in 2007, but this did not change the long-term increasing trend. In 2007, the number of leatherback turtle nests on index beaches was the highest since the trend-monitoring program began in 1989.

Recovery Criteria

The U.S. Atlantic population of leatherbacks can be considered for delisting when the following conditions are met:

1. The adult female population increases over the next 25 years, as evidenced by a statistically significant trend in the number of nests at Culebra, Puerto Rico, St. Croix, U.S. Virgin Island, and along the east coast of Florida.

2. Nesting habitat encompassing at least 75 percent of nesting activity in U.S. Virgin Islands, Puerto Rico, and Florida is in public ownership.

3. All priority one tasks identified in the recovery plan have been successfully implemented.

The current "Recovery Plan for the Leatherback Turtles (*Dermochelys coriacea*)" in the U.S. Caribbean, Atlantic, and Gulf of Mexico was signed in 1992 and the "Recovery Plan for U.S. Pacific Populations of Leatherback Turtle (*Dermochelys coriacea*)" was signed in 1998. The recovery criteria contained in the plans, while not strictly adhering to all elements of the Recovery Planning Guidelines (Service and NMFS), are a viable measure of the species status.

Common Threats to sea Turtles in Florida

Anthropogenic factors that impact hatchlings and adult female turtles on land, or the success of nesting and hatching include: beach erosion, armoring and nourishment; artificial lighting; beach cleaning; increased human presence; recreational beach equipment; beach driving; coastal construction and fishing piers; exotic dune and beach vegetation; and poaching. An increased human presence at some nesting beaches or close to nesting beaches has lead to secondary threats such as the introduction of exotic fire ants, feral hogs, dogs and increased presence of native species (e.g. raccoons, armadillos, and opossums), which raid and feed on turtle eggs. Although sea turtle nesting beaches are protected along large expanses of the western North Atlantic coast, other areas along these coasts have limited or no protection.

Anthropogenic threats in the marine environment include oil and gas exploration and transportation; marine pollution; underwater explosions; hopper dredging, offshore artificial lighting; power plant entrainment and/or impingement; entanglement in debris; ingestion of marine debris; marina and dock construction and operation; boat collisions; poaching and fishery interactions.

Disease

Fibropapillomatosis, a disease of sea turtles characterized by the development of multiple tumors on the skin and internal organs, is also a mortality factor, particularly for green turtles. This disease has seriously impacted green turtle populations in Florida, Hawaii, and other parts of the world. The tumors interfere with swimming, eating, breathing, vision, and reproduction, and turtles with heavy tumor burdens may die.

Climate Change

Climate change is evident from observations of increases in average global air and ocean temperatures, widespread melting of snow and ice, and rising sea level, according to the Intergovernmental Panel on Climate Change Report (IPCC 2007). The IPCC Report (2007) describes changes in natural ecosystems with potential wide-spread effects on many organisms, including marine mammals and migratory birds. The potential for rapid climate change poses a significant challenge for fish and wildlife conservation. Species' abundance and distribution are dynamic, relative to a variety of factors, including climate. As climate changes, the abundance and distribution of fish and wildlife will also change. Highly specialized or endemic species are likely to be most susceptible to the stresses of changing climate. Based on these findings and other similar studies, the Department of the Interior (DOI) requires agencies under its direction to consider potential climate change effects as part of their long-range planning activities (Service 2007).

Temperatures are predicted to rise from 2°C to 5°C for North America by the end of this century (IPCC 2007a, b). Other processes to be affected by this projected warming include rainfall (amount, seasonal timing and distribution), storms (frequency and intensity), and sea level rise.

Climatic changes in Florida could amplify current land management challenges involving habitat fragmentation, urbanization, invasive species, disease, parasites, and water management. Global warming will be a particular challenge for endangered, threatened, and other "at risk" species. It is difficult to estimate, with any degree of precision, which species will be affected by climate change or exactly how they will be affected. The Service will use Strategic Habitat Conservation planning, an adaptive science-driven process that begins with explicit trust resource population objectives, as the framework for adjusting our management strategies in response to climate change (Service 2006). As the level of information increases concerning the effects of global climate change on sea turtles and its designated critical habitat, the Service will have a better basis to address the nature and magnitude of this potential threat and will more effectively evaluate these effects to the range-wide status of sea turtles.

Coastal Development

Loss of nesting habitat related to coastal development has had the greatest impact on nesting sea turtles in Florida. Beachfront development not only causes the loss of suitable nesting habitat, but can result in the disruption of powerful coastal processes accelerating erosion and interrupting the natural shoreline migration (National Research Council 1990b). This may in turn cause the need to protect upland structures and infrastructure by armoring, groin placement, beach emergency berm construction and repair, and beach nourishment which cause changes in, additional loss or impact to the remaining sea turtle habitat.

Hurricanes

Hurricanes were probably responsible for maintaining coastal beach habitat upon which sea turtles depend through repeated cycles of destruction, alteration, and recovery of beach and dune habitat. Hurricanes generally produce damaging winds, storm tides and surges, and rain and can result in severe erosion of the beach and dune systems. Overwash and blowouts are common on barrier islands. Hurricanes and other storms can result in the direct or indirect loss of sea turtle nests, either by erosion or washing away of the nests by wave action or inundation or "drowning" of the eggs or hatchlings developing within the nest or indirectly by loss of nesting habitat. Depending on their frequency, storms can affect sea turtles on either a short-term basis (nests lost for one season and/or temporary loss of nesting habitat) or long-term, if frequent (habitat unable to recover). How hurricanes affect sea turtle nesting also depends on its characteristics (winds, storm surge, rainfall), the time of year (within or outside of the nesting season), and where the northeast edge of the hurricane crosses land.

Because of the limited remaining nesting habitat, frequent or successive severe weather events could threaten the ability of certain sea turtle populations to survive and recover. Sea turtles evolved under natural coastal environmental events such as hurricanes. The extensive amount of pre-development coastal beach and dune habitat allowed sea turtles to survive even the most severe hurricane events. It is only within the last 20 to 30 years that the combination of habitat loss to beachfront development and destruction of remaining habitat by hurricanes has increased the threat to sea turtle survival and recovery. On developed beaches, typically little space remains for sandy beaches to become re-established after periodic storms. While the beach itself moves landward during such storms, reconstruction or persistence of structures at their pre-storm locations can result in a major loss of nesting habitat.

The 2004 hurricane season was the most active storm season in Florida since weather records began in 1851. Hurricanes Charley, Frances, Ivan, and Jeanne, along with Tropical Storm Bonnie, damaged the beach and dune system, upland structures and properties, and infrastructure in the majority of Florida's coastal counties. The cumulative impact of these storms exacerbated erosion conditions throughout the state.

The 2005 hurricane season was a record-breaking season with 27 named storms. Hurricanes Dennis, Katrina, Ophelia, Rita, and Wilma, and Tropical Storms Arlene and Tammy impacted Florida. The cumulative impact of these storms exacerbated erosion conditions in south and northwest Florida.

Erosion

The designation of a Critically Eroded Beach is a planning requirement of the State's Beach Erosion Control Funding Assistance Program. A segment of beach shall first be designated as critically eroded in order to be eligible for State funding. A critically eroded area is a segment of the shoreline where natural processes or human activity have caused or

contributed to erosion and recession of the beach or dune system to such a degree that upland development, recreational interests, wildlife habitat, or important cultural resources are threatened or lost. Critically eroded areas may also include peripheral segments or gaps between identified critically eroded areas which, although they may be stable or slightly erosional now, their inclusion is necessary for continuity of management of the coastal system or for the design integrity of adjacent beach management projects. It is important to note, that for an erosion problem area to be critical, there shall exist a threat to or loss of one of four specific interests – upland development, recreation, wildlife habitat, or important cultural resources. The total of critically eroded beaches statewide in Florida for 2007 is 388 miles of the 497 miles of shoreline. Seventy-eight (78) percent of the State's shoreline is considered to be critically eroded.

Beachfront Lighting

Artificial beachfront lighting may cause disorientation (loss of bearings) and misorientation (incorrect orientation) of sea turtle hatchlings. Visual signs are the primary sea-finding mechanism for hatchlings (Mrosovsky and Carr 1967; Mrosovsky and Shettleworth 1968; Dickerson and Nelson 1989; Witherington and Bjorndal 1991). Artificial beachfront lighting is a documented cause of hatchling disorientation and misorientation on nesting beaches (Philibosian 1976; Mann 1977). The emergence from the nest and crawl to the sea is one of the most critical periods of a sea turtle's life. Hatchlings that do not make it to the sea quickly become food for ghost crabs, birds, and other predators or become dehydrated and may never reach the sea. Some types of beachfront lighting attract hatchlings away from the sea while some lights cause adult turtles to avoid stretches of brightly illuminated beach. Research has documented significant reduction in sea turtle nesting activity on beaches illuminated with artificial lights (Witherington 1992). Table 2 summarizes the number of documented disorientations over the last 8 years. Light sources contributing to these events may be obtained from:
(http://www.myfwc.com/seaturtle/Lighting/Light_Disorient.htm).

Table 2. Documented disorientations along the Florida coast.

Year	Total Number of Hatchling Disorientation Events	Total Number of Hatchlings Involved in Disorientation Events	Total Number of Adult Disorientation Events
2001	743	28,674	19
2002	896	43,226	37
2003	1,446	79,357	18
2004	888	46,487	24
2005	976	41,521	50
2006	1,521	71,798	40
2007	1,410	64,433	25
2008	1,192	49,623	62

Predation

Predation of sea turtle eggs and hatchlings by native and introduced species occurs on almost all nesting beaches. Predation by a variety of predators can considerably decrease sea turtle nest hatching success. The most common predators in the southeastern U.S. are ghost crabs (*Ocypode quadrata*), raccoons (*Procyon lotor*), feral hogs (*Sus scrofa*), foxes (*Urocyon cinereoargenteus* and *Vulpes vulpes*), coyotes (*Canis latrans*), armadillos (*Dasypus novemcinctus*), and fire ants (*Solenopsis* spp.) (Dodd 1988, Stancyk 1995). In the absence of nest protection programs in a number of locations throughout the southeast U.S., raccoons my depredate up to 96 percent of all nests deposited on a beach (Davis and Whiting 1977, Hopkins and Murphy 1980, Stancyk *et al.* 1980, Talbert *et al.* 1980, Schroeder 1981, Labisky *et al.* 1986). As nesting habitat dwindles, it is essential that nest production be naturally maximized so the turtles may continue to exist in the wild. In response to increasing predation of sea turtle nests by coyotes, foxes, hogs, and raccoons, multi-agency cooperative efforts have been initiated and are ongoing throughout Florida, in particular on public lands.

Driving on the Beach

The operation of motor vehicles on the beach affects sea turtle nesting by: interrupting a female turtle approaching the beach; headlights disorienting or misorienting emergent hatchlings; vehicles running over hatchlings attempting to reach the ocean; and vehicle tracks traversing the beach which interfere with hatchlings crawling to the ocean. Apparently, hatchlings become diverted not because they cannot physically climb out of the rut (Hughes and Caine 1994), but because the sides of the track cast a shadow and the hatchlings lose their line of sight to the ocean horizon (Mann 1977). The extended period of travel required to negotiate tire tracks and ruts may increase the susceptibility of hatchlings to dehydration and depredation during migration to the ocean (Hosier *et al.* 1981). Driving directly above or over incubating egg clutches or on the beach can cause sand compaction which may result in adverse impacts on nest site selection, digging behavior, clutch viability, emergence by hatchlings, decreasing nest success, and directly killing pre-emergent hatchlings (Mann 1977, Nelson and Dickerson 1987, Nelson 1988).

The physical changes and loss of plant cover caused by vehicles on dunes can lead to various degrees of instability, and therefore encourage dune migration. As vehicles move either up or down a slope, sand is displaced downward, lowering the trail. Since the vehicles also inhibit plant growth, and open the area to wind erosion, dunes may become unstable, and begin to migrate. Unvegetated sand dunes may continue to migrate across stable areas as long as vehicle traffic continues. Vehicular traffic through dune breaches or low dunes on an eroding beach may cause accelerated rate of overwash and beach erosion (Godfrey *et al.* 1978). If driving is required, the area where the least amount of impact occurs is the beach between the low and high tide water lines. Vegetation on the dunes can quickly re-establish provided the mechanical impact is removed.

In 1985, the Florida Legislature severely restricted vehicular driving on Florida's beaches, except that which is necessary for cleanup, repair, or public safety. This legislation also allowed an exception for five counties to continue to allow vehicular access on coastal beaches due to the availability of less than 50 percent of its peak user demand for off-beach parking. The counties affected by this exception are Volusia, St. Johns, Gulf, Nassau, and Flagler Counties, as well as limited vehicular access on Walton County beaches for boat launching.

Analysis of the species/critical habitat likely to be affected

The loggerhead sea turtle, green sea turtle, and leatherback sea turtle are currently listed because of their low and declining population sizes caused by overharvest and habitat loss with continuing anthropogenic threats from commercial fishing, disease, and degradation of remaining habitat. The proposed action has the potential to adversely affect nesting females of these species, their nests, and hatchlings within the proposed area. The proposed action may occur throughout the calendar year (emergency repairs). However, temporary actions and long-term solutions will be constructed outside the peak sea turtle nesting season (May 1 through October 31). Regardless of the construction time, the action will adversely affect the aforementioned nesting female sea turtles, their nests, and hatchlings within the proposed project area.

Potential effects include behavior modification of nesting females due to the presence of armoring structures resulting in false crawls, displacement of nesting turtles into nesting habitat that is sub-optimal, an increase in the physiological cost of nesting, a possible decrease in nesting activity, entrapment or mortality of nesting turtles and hatchlings, and washout or inundation of eggs laid seaward of armoring structures.

Critical habitat has not been designated in the continental U.S.; therefore, the proposed action will not result in the destruction or adverse modification of critical habitat.

ENVIRONMENTAL BASELINE

Status of the species within the action area

Loggerhead Sea Turtle

Reported loggerhead sea turtle nesting activity for Flagler County beaches from 1993 through 2008 has occurred as early as April 22 and as late as September 14 (Commission, Fish and Wildlife Research Institute [FWRI] 2009). Incubation ranges from about 45 days to 90 days, depending on incubation temperatures, but averages 55 days to 60 days for most clutches in Florida. Table 3 illustrates the loggerhead sea turtle nesting activity (false crawls, nests) in the action area over the last 10 nesting seasons.

Table 3. Loggerhead sea turtle nesting activity at Flagler Beach.

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
False	12	46	32	110	29	45	58	87	61	111
Nests	45	61	48	76	112	79	62	62	58	90

Green Sea Turtle

Reported green turtle nesting activity for Flagler County beaches from 1993 through 2008 has occurred as early as May 25 and as late as September 30 (FWRI 2009). Incubation ranges from about 45 to 75 days, depending on incubation temperatures. Table 4 illustrates the green sea turtle nesting activity (false crawls, nests) in the action area over the last 10 nesting seasons.

Table 4. Green sea turtle nesting activity at Flagler Beach.

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
False	0	5	0	7	2	0	4	1	25	4
Nests	0	4	0	8	0	0	8	2	14	1

Leatherback Sea Turtle

Reported leatherback nesting activity for Flagler County beaches from 1993 through 2008 has occurred as early as April 13 and as late as July 17 (FWRI 2009). Typically incubation takes from 55 to 75 days. Table 5 illustrates the leatherback sea turtle nesting activity (false crawls, nests) in the action area over the last 10 nesting seasons.

Table 5. Leatherback sea turtle nesting activity at Flagler Beach.

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
False	0	2	0	0	0	0	0	0	0	0
Nests	0	1	0	0	1	0	3	0	0	0

Factors affecting species environment within the action area

The SR A1A study corridor is immediately adjacent to the Atlantic Ocean for this consultation. The average loss of shoreline, as noted in the SR A1A Biological Assessment, is approximately 1 foot per year. As a result, the mean high water line in some areas is within 50 feet of the roadway, which is in a zone marked by the Coastal Construction Control Line where construction is prohibited. As a result of this trend, previous armoring

has occurred throughout the study corridor. The first revetment on Flagler Beach was permitted in December 1981. The Department continues to repair the original shoreline hardening areas as well as additional areas within the action area.

Existing Coastal Armoring

Currently, granite and coquina rocks occur on the dune face (foredune) from just south of 23rd Street South to 7th Street South, an approximate distance of 1.90 miles. Within this section, between 13th Street South and 12th Street South, a sheet pile seawall with a concrete cap was constructed in January of 2006 totaling 140 linear feet (0.02 miles). Coquina rocks also are present between 7th Street North and 10th Street North (0.22 miles). In the vicinity of 21 Street North and 22nd Street North, coquina rocks occupy approximately 100 linear feet and 50 linear feet (0.02 miles) respectively. The total coverage along the 5.2 mile shoreline dune face within the consultation area is roughly 2.16 miles.

An after-the-fact permit request, in response to erosion caused by storms during the fall of 1999, resulted in the construction a new rock revetment and placement of additional rocks on the existing revetment between 19th Street South and 6th Street South. In the first full year of sea turtle monitoring in the immediate area after construction (2000), a total of 47 loggerhead turtle emergences were documented. Only 12 nests were deposited; sea turtles returned to the water after coming in contact with the rocks resulting in 32 false crawls. The rock revetment interfered with 68 percent of the loggerhead emergences onto the beach in this area. Additionally, three green sea turtles also emerged onto the beach during this monitoring. All three turtles returned to the water without nesting. At least one turtle had direct contact with the rock revetment.

The number of loggerhead turtle nests in front of the revetment in 2000, as compared to the number of emergences, was significantly lower than in other parts of Flagler Beach. The nesting success rate in front of the revetment was only 25 percent, compared to a nesting success rate of 65 percent for other Flagler Beach areas that year. Typically, nesting success rate lower than 50 percent indicate some type of interference with the ability for sea turtles to nest.

Studies outside the consultation area have documented identical trends. In a study, *The Impact of Coastal Armoring Structures on Sea Turtle Nesting Behavior* (Mosier 1998); seawalls were shown to have had detrimental effects on sea turtle nesting. Fewer turtles emerged onto beaches in front of seawalls than onto adjacent, non-walled beaches, and of those that did emerge in front of seawalls, more returned to the water without nesting. In this study, of the crawls recorded in front of the seawalls, 71 percent of them indicated that the turtles had come in contact with the walls. Of those turtles that contacted a wall, 86 percent returned to the water without nesting. Another Florida coastal armoring study compared the effects of different types of armoring structures (Mosier and Witherington 2002). The findings were similar with fewer successful nesting emergences in front of the various armoring structures than the non-walled "natural" areas. Sea turtles on armored

sections of beach tended to wander greater distances than those that emerged on adjacent non-armored beaches.

Armoring can eliminate a sea turtle's access to upper regions of the beach/dune system. Consequently, nests on armored beaches are generally found at lower elevations than those on non-armored beaches. Nests at lower elevations are subject to a greater risk of tidal inundation and can potentially alter thermal regimes, an important factor in determining the sex ratio of hatchlings (Mrosovsky and Provancha 1989, Ackerman 1997, Delpech and Foote 1998). Nests laid seaward of armoring structures are also vulnerable to washout. Thus, beaches in front of existing armoring structures represent sub-optimal nesting habitat and incubation environments for sea turtles.

Stormwater Runoff from the Roadway

The existing SR A1A roadway has no stormwater facilities (swales, ditches, collection ponds) incorporated into the design. Thus, no treatment or attenuation from rainfall events occur as the water exits the roadway surface. On the west side of the facility, the stormwater runoff flows onto adjacent properties. The stormwater runoff along the east side of the roadway collects between the edge of pavement and the existing dune crest (berm). The stormwater accumulates and if the water can not infiltrate fast enough, it ultimately ponds along the edge of the travel lane shoulders. As the water stages up, the force of the water washes out the berm and flows directly onto the beach. The Department has indicated that washouts occur more easily if the dune has been compromised by foot traffic. Depending on the severity of the rain event, the stormwater erodes the dune crest and dune face often transporting large amounts of sand onto the beach. The delta like deposition can result in additional material on top of turtle nests altering the depth of the eggs or emerging hatchlings. As the erosion continues, large trenches are formed that can wash out nests from the large volumes of water coming off the impervious surface.

In 2007, the Department's maintenance records indicate 15 emergency/temporary repairs to the roadside berms where additional sand was placed on the dune crest because of the scour caused by the roadway runoff. The Service consulted with the Corps to authorize emergency repairs to stabilize the roadway shoulder and berm for 5 of these events. Maintenance records provided to the Service for this consultation only included 2005 through 2008. During this period, 26 repair events occurred.

Lighting

Flagler County's Sea Turtle Lighting Ordinance (Appendix C, Article VI, 6.05.55) mandates that, "No light source from any part of your property shall be visible to a person standing on any part of the beach. No light from any part of your property shall illuminate any part of the beach, directly or indirectly. To achieve compliance, lights must be shielded, redirected, replaced, or extinguished. For interior lighting, close blinds/shades." The City of Flagler Beach (Appendix A: Article IV Sec. 4.04.01. Protection of Sea Turtles)

has adopted similar regulations as a matter of local policy with the intent to be consistent with, and in furtherance of, the provisions of the Act to prevent harm to sea turtles.

A night field reconnaissance of the lighting along SR A1A was conducted in August 2007. The street lights along SR A1A are the property of The City of Flagler Beach, The Florida Power and Light Company, and the Department. The City of Flagler Beach has a contract to maintain the public street lights for the Department. Results of the night survey revealed that the street lighting along SR A1A consists mainly of arm mounted, flat-face cobra fixtures with metal halide 50 watt bulbs. Rounded-bulb fixtures were present at 17th Street North, 16th Street North, 14th Street South, and 8th Street South.

Businesses along the corridor may have more of an impact on the disorientation of hatchlings than the street lights. Also, lights on businesses with two or more stories were visible from the beach. A1A Liquor Store and Flagler Motel (18th Street South to 19th Street South), Fisherman's Net Seafood (5th Street South), and in the vicinity of 2nd Street North to 7th Street North were noted in the survey with lights visible from the beach.

The SR A1A Biological Assessment noted the 2006 Sea Turtle Survey recorded two nests where disorientation of the hatchlings occurred; lighting was assumed to be the cause. These nests were at 580 South A1A and 2544 South A1A (FB 13801, FB 5719). Information provided by the Commission identified two disorientation events for the 2007 nesting season. The 15 September 2007 incident location was at 590 South A1A across from Mother's Bar. The second incident occurred at the same location on 16 September 2007.

Random Events

Tropical storms or interactions between low and high-pressure systems during late summer and fall on the east coast of the U.S. create conditions which often result in beach erosion and the subsequent loss of sea turtle nests. Nests may be washed out or inundated long enough to result in egg mortality. Due to nesting chronology, most of the nests lost to storm events will be loggerhead and green sea turtle nests. Leatherback sea turtles typically nest earlier in the season and most, if not all, nests have hatched prior to the initiation of the tropical storm season.

Climate Change

Based on the present level of available information concerning the effects of global climate change on the status of sea turtles or its designated critical habitat, the Service acknowledges the potential for changes to occur in the action area, but presently has no basis to evaluate if or how these changes are affecting sea turtles or its designated critical habitat. Nor does our present knowledge allow the Service to project what the future effects from global climate change may be or the magnitude of these potential effects.

EFFECTS OF THE ACTION

This section includes an analysis of the direct and indirect effects of the proposed action on the species and critical habitat and its interrelated and interdependent activities. The action area is defined as the Department's entire right-of-way, adjacent beach, and nearshore area of the Atlantic Ocean. Areas named within the Action Area but outside the Department's right-of-way are recognized as non-jurisdictional for the Department, and should be part of a multi-governmental approach for long-term beach erosion solution. This determination was based on the influencing factors considered, analyses for effects of the action, and the species response to the proposed action that affects sea turtles.

Beneficial Effects

These effects are those that are wholly positive, without any adverse effects, on listed species or designated critical habitat. The Service has not identified any beneficial effects to sea turtles as a result of shoreline armoring construction.

Direct Effects

Direct effects of coastal armoring may result from the construction activities during the nesting season, the deposition of the materials (rocks, sand) onto the beach utilized during the shoreline hardening, and the presence of sheet piles from the seawall placement adjacent to the beach. This would include loss of nesting habitat and increased disruption of the nesting activities.

Construction of the armoring structures (seawalls, granite rocks, and coquina rocks) are expected to directly affect all areas where armoring of the shoreline occurs. Additionally, materials used for the armoring construction may become dislodged or transported from their original placement to the nesting habitat. Granite rocks, coquina rocks, and sand placed on the dune face and dune crest have continued to become dislodged from the revetment by means of wave action or stormwater transport from the roadway surface on to the beach. Depending on the timing (during the nesting season), maintenance frequency (how often maintenance is scheduled), or the duration (amount of time) the material is on the beach, take of sea turtles or their nests may occur. The maintenance activities associated with the removal of the material from the nesting area during the nesting season may also result in take of the species if equipment is required to be on the beach.

Projects conducted during the nesting and hatching season could result in the loss of sea turtles through disruption of adult nesting activity and by burial or crushing of nests or hatchlings. While a nest monitoring and egg relocation program would reduce these impacts, nests may be inadvertently missed (when crawls are obscured by rainfall, wind, and/or tides) or misidentified as false crawls during daily patrols. Even under the best of conditions, about 7 percent of the nests can be misidentified as false crawls by experienced sea turtle nest surveyors (Schroeder 1994). Along with the potential for missing nests

during a nest relocation program, there is a potential for eggs to be damaged by their movement, particularly if eggs are not relocated within 12 hours of deposition (Limpus *et al.* 1979). Nest relocation can have adverse impacts on incubation temperature (and hence sex ratios), gas exchange parameters, hydric environment of nests, hatching success, and hatchling emergence (Limpus *et al.* 1979, Ackerman 1980, Parmenter 1980, Spotila *et al.* 1983, McGehee 1990). Relocating nests into sands deficient in oxygen or moisture can result in mortality, morbidity, and reduced behavioral competence of hatchlings. Water availability is known to influence the incubation environment of the embryos and hatchlings of turtles with flexible-shelled eggs, which has been shown to affect nitrogen excretion (Packard *et al.* 1984), mobilization of calcium (Packard and Packard 1986), mobilization of yolk nutrients (Packard *et al.* 1985), hatchling size (Packard *et al.* 1981, McGehee 1990), energy reserves in the yolk at hatching (Packard *et al.* 1988), and locomotory ability of hatchlings (Miller *et al.* 1987).

Comparisons of hatching success between relocated and *in situ* nests have noted significant variation ranging from a 21 percent decrease to a 9 percent increase for relocated nests (FWC statewide sea turtle nesting data). Comparisons of emergence success between relocated and *in situ* nests have also noted significant variation ranging from a 23 percent decrease to a 5 percent increase for relocated nests (SNBS). A 1994 State study of hatching and emergence success of *in situ* and relocated nests at seven sites in Florida found that hatching success was lower for relocated nests in five of seven cases with an average decrease for all seven sites of 5 percent (range = 7.2 percent increase to 16.3 percent decrease). Emergence success was lower for relocated nests in all seven cases by an average of 11.7 percent (range = 3.6 to 23.36 percent) (Meylan 1995). In addition, nest relocation often results in the concentration of eggs within the relocation site, making them more susceptible to predation.

Indirect Effects

Many of the direct effects of coastal armoring may persist over time and become indirect impacts. These indirect effects include changes in the physical characteristics of the beach seaward and in the vicinity of armoring structures.

The Service anticipates that emergency repairs as well as the temporary actions authorized by the State and the Corps will subsequently remain in place with modifications to meet State requirements. Consequently, any adverse effects to sea turtles due to the presence of an armoring structure are expected to occur throughout the life of the structure.

Due to the extreme erosion events that are necessary to require construction of emergency armoring, it is likely that most structures will be placed within the tidal zone of the sea. In addition to the fact that an armoring structure creates a physical obstacle to nesting sea turtles, the interaction between an armoring structure and the hydrodynamics of tide and current often results in the alteration of the beach profile seaward and in the immediate vicinity of the structure (Pilkey and Wright 1988, Terchunian 1988, Tait and Griggs 1990,

Plant and Griggs 1992) including increased erosion seaward of structures, increased longshore currents that move sand away from the area, loss of interaction between the dune and ocean, and concentration of wave energy at the ends of an armoring structure (Schroeder and Mosier 1996). These changes or combination of changes can have various detrimental effects on sea turtles and their nesting habitat.

Coastal armoring can hinder nesting females from reaching suitable nesting sites and result in increased false crawls where female turtles return to the water without nesting (Mosier 1998). Threats to nesting sea turtles posed by armoring may include a reduction of nesting habitat, displacement of turtles into nesting habitat that is sub-optimal (e.g., a lower beach elevation where eggs would drown; Murphy 1985), an increase in the physiological cost of nesting, a possible decrease in nesting activity (Mosier 1998), and potentially even entrapment of nesting turtles. Schroeder and Mosier (1996) indicate that sea turtle nests seaward of armoring are more prone to mortality due to inundation or exacerbated erosion. Also as armoring structures age and subsequently fail and break apart, they spread debris on the beach, which may further impede access to suitable nesting sites and trap hatchlings and nesting turtles.

Placements of the armoring structures are expected to result in behavior modification of nesting females due to the presence of the armoring structure, resulting in false crawls and their return to the water without nesting; displacement of female turtles into nesting habitat that is sub-optimal; an increase in the physiological cost of nesting; a possible decrease in nesting activity; potential entrapment and mortality of nesting turtles and hatchlings; and destruction of nests from washout or inundation due to the effects of the armoring structure and shoreline processes.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

As the extent of armoring on beaches increases, the probability of a nesting turtle encountering an armoring structure or depositing a nest in sub-optimal habitat increases. Additionally, the displacement of nests from armored locations may increase the density of nests in a dwindling number of suitable nesting sites thereby increasing the potential for density-dependent nest mortality (turtles digging up existing nests).

CONCLUSION

The continued existence of rock revetment and seawall structures along the nesting area will continue to result in take of sea turtles until they are removed or the beach substantially accretes to the point of providing ample nesting area. The initial correspondence identified

five areas totaling approximately 1,000 linear feet of shoreline for which erosion is recurring or has recently become problematic. During the consultation, eleven areas totaling 4,950-feet of shoreline have been identified. The Department indicated that funding for the entire action area is not currently attainable.

The Service anticipates that no more than 3,000 linear feet of available sea turtle nesting habitat within action area will be taken over an 8-year period (by July 1, 2017) for shoreline hardening. The areas included are for the dune crest and dune face stabilization. This threshold will allow the Service to evaluate over time the effectiveness of the activities and the nesting trends along this shoreline.

After reviewing the following information; current status of the loggerhead sea turtle, green sea turtle, and leatherback sea turtle, the environmental baseline for the action area, the effects of the proposed action and the cumulative effects, it is the Service's biological opinion that the erosion control systems to stabilize and protect SR A1A, as proposed, are not likely to jeopardize the continued existence of the loggerhead sea turtle, green sea turtle, and leatherback sea turtle. Critical habitat has been designated for the waters surrounding Culebra Island, Puerto Rico, and its outlying keys for the green sea turtle and at Sandy Point on the western end of the island of St. Croix, U.S. Virgin Islands for the leatherback sea turtle; however, this action does not affect those areas and no destruction or adverse modification of those critical habitats are expected.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered or threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary, and must be undertaken by the Administration so that they become binding conditions of any grant or permit issued to the Department, as appropriate, for the exemption in section 7(o)(2) to apply. The Administration has a continuing duty to regulate the activity covered by this incidental take statement. If the Administration (1) fails to assume and implement the terms and conditions

or (2) fails to require the Department to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the Department must report the progress of the action and its impacts on the species to the Service as specified in the incidental take statement [50 CFR §402.14(i)(3)].

AMOUNT OR EXTENT OF TAKE ANTICIPATED

The Service anticipates no more than 3,000 linear feet of sea turtle nesting habitat will be degraded as a result of construction of the armoring structures. The amount of linear feet is dependent on the projects being completed by July 1, 2017. Due to the current erosion of the beach, the nesting habitat will continue to be degraded or lost. The loss in habitat quality is expected to continue if the erosion continues. If the beach does not accrete, the presence of coastal armoring will result in take in the form of: (1) behavior modification of nesting females due to the presence of the armoring structure, resulting in false crawls and their return to the water without nesting; (2) prevention of westward movement of female turtles in search of beach with higher elevations, thus displacing female turtles into nesting habitat that is sub-optimal (e.g., a lower beach elevation where eggs would drown); (3) an increase in the physiological cost of nesting; (4) a possible decrease in nesting activity; (5) potential entrapment and mortality of nesting turtles and hatchlings; and (6) destruction of nests from washout or inundation due to the effects of the armoring structure and shoreline processes.

The Service expects incidental take of sea turtles due to project impacts will be difficult to detect for the following reasons: (1) sea turtles nest primarily at night and all nests are not found because [a] natural factors, such as rainfall, wind, and tides may obscure crawls and [b] human-caused factors, such as pedestrian traffic, may obscure crawls, and result in nests being destroyed because they were missed during a nesting survey program; (2) the total number of eggs or hatchlings per undiscovered nest is unknown; (3) an unknown number of females may avoid the project beach and be forced to nest in a less than optimal area; (4) the effects of increased energy expenditure of nesting females encountering armoring structures is unknown; and (5) the number of nests laid seaward of armoring structures cannot be predicted. However, the level of take of these species can be anticipated by the degradation of suitable turtle nesting beach habitat because: (1) sea turtles nest within the vicinity of the project area; (2) the placement of armoring structures will negatively affect nesting habitat seaward of and adjacent to the structures; and (3) the placement of armoring structures is known to decrease nesting female emergence to nesting sites and increase the distance female sea turtles travel to find nesting habitat.

EFFECT OF TAKE

In the accompanying biological opinion, the Service determined that this level of expected take is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat.

REASONABLE AND PRUDENT MEASURES

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize take of the threatened loggerhead sea turtle, endangered green sea turtle, and endangered leatherback sea turtle.

1. Non-emergency armoring construction activities must not occur from May 1 through October 31, the period of peak sea turtle egg laying and egg hatching. This will minimize the possibility of sea turtle nest burial, crushing of eggs, or nest excavation. An exemption to this may occur through coordination or emergency consultation with the Service.

2. If non-emergency armoring activities will be conducted during the period from April 15 through April 30 and/or November 1 through November 30 and if surveys indicate any nests are still incubating within the project area, construction activities must be conducted during daylight hours only to avoid encountering nesting and/or hatchling turtles.

3. If non-emergency armoring construction activities will be conducted during the period from April 15 through April 30 and/or November 1 through November 30 and if surveys indicate any nests are still incubating within the project area, construction may not proceed until surveys for early and late nesting sea turtles have been conducted and nests laid in the area of the armoring construction activities have been marked for avoidance to minimize sea turtle nest burial, crushing of eggs, or nest excavation.

4. Emergency armoring construction activities may occur during any portion of the sea turtle nesting and hatching season (April 15 through November 30) as long as sea turtle protection measures are in place.

5. All rocks, derelict concrete, metal, coastal armoring geotextile material or other debris must be removed from the beach prior to any non-emergency armoring construction activities unless it is determined in coordination with the Service or Commission that removal would create an unacceptable disturbance.

6. Armoring structures will only be constructed of materials discussed in the proposed action section of the biological opinion. The armoring structure must be sited as far landward as possible and as close to the bluff line as possible.

7. A vegetated dune must be constructed in front of long-term armoring structures. The placement and design of the dune must emulate the natural dune system to the maximum extent practicable, including the dune configuration and shape. An exemption to this may occur through coordination with the Service and Commission if it is found that the constructed dune continually erodes away.

8. Beach quality sand suitable for sea turtle nesting, successful incubation, and hatchling emergence must be used for the constructed dune.

TERMS AND CONDITIONS

In order to be exempt from the prohibitions of section 9 of the Act, the Department must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

The Service anticipates that the armoring authorized will subsequently remain in place as permanent armoring possibly with some modifications to meet State requirements. Any adverse effects to sea turtles due to the presence of armoring structures are expected to occur throughout the life of the structures. Therefore, the terms and conditions of this incidental take statement will remain in effect for the life of the structures.

1. Non-emergency armoring construction activities, operation of heavy equipment, or transportation or storage of equipment or materials will not be allowed on the beach from May 1 through October 31. An exemption to this may occur through coordination or emergency consultation with the Service. The Service will determine whether work (a) may proceed in accordance with the terms and conditions; or (b) proceed in accordance with the terms and conditions and other requirements as developed by the Service.

2. For the periods from April 15 through April 30 and November 1 through November 30, if nests are laid in areas where they may be affected by non-emergency construction activities, the Department must coordinate with the Service or Commission to ensure that eggs will be protected per the requirements listed below.

   2a. Nesting surveys and nest protection activities must only be conducted by persons with prior experience and training in these activities and who are duly authorized to conduct such activities through a valid permit issued by the Commission, pursuant to FAC 68E-1. Contact the Commission's Marine Turtle Management Program in Tequesta at (561) 575-5408 for information on the Permit Holder in the project area. Nesting surveys must be conducted daily between sunrise and 9 a.m. The contractor must coordinate daily with the Permit Holder so as to ensure that construction activity does not occur in any location prior to completion of the necessary sea turtle protection measures.

   2b. Nests that may be affected by non-emergency construction activities will be left in place and marked in accordance with the requirements of the Commission for avoidance. No activities will occur within this marked area nor will any activities occur that could result in impacts to the nest. Nest sites must be inspected daily to

assure nest markers remain in place and the nest has not been disturbed by any construction activity.

2c. No nest relocation will occur as a result of non-emergency construction activities. Nest relocation may only occur if other non-construction related factors threaten the success of the nest and such relocation is in accordance with the Commission's Marine Turtle Conservation Guidelines.

2d. Nests deposited outside the armoring construction footprint but within the equipment access routes must be marked as described in 2b above and left in place unless other non-constructed related factors threaten the success of the nest and such relocation is in accordance with the Commission's Marine Turtle Conservation Guidelines. All mechanical equipment must avoid nests by at least 10 feet.

3. Emergency armoring construction activities may occur during any portion of the sea turtle nesting and hatching season (April 15 through November 30), as long as the following conditions are met:

3a. If any work is to be accomplished from the beach, an area of impact associated with the proposed construction, the project area, has been established and adequately marked/flagged. The area of impact shall be defined as that area seaward of SR A1A that will be affected by construction; the beach access point, if needed for heavy equipment to travel to the construction site; and the travel corridor from the beach access point to the construction site. The project area shall be conspicuously marked or flagged and all marking or flagging must be maintained throughout the construction period.

3b. A sea turtle monitoring and nest protection program (described above in item 2) has been in place since the beginning of the sea turtle nesting season (April 15) or 65 days prior to the initiation of emergency armoring construction activities within the project area, whichever is later.

3c. If there are existing marked sea turtle nests which can be determined in advance to be vulnerable to disturbance from impending emergency armoring construction or are determined after an emergency armoring project to be vulnerable, the Department shall coordinate with the Service or Commission to relocate them if possible. In the event sea turtle nests cannot be relocated in accordance with these guidelines, such nest(s) shall be avoided to the extent practical.

i. Nesting surveys and egg relocations will only be conducted by personnel with prior experience and training in nesting survey and egg relocation procedures. Surveyors must have a valid Commission permit. Nesting surveys must be conducted daily between sunrise and 9 a.m.

ii. Only those nests that may be affected by emergency armoring construction activities will be relocated. Nests determined to require relocation after an armoring project must be moved if possible no later than 9 a.m. the morning following deposition to a nearby self-release beach site in a secure setting where artificial lighting will not interfere with hatchling orientation. Nest relocations in association with emergency armoring construction activities must cease when construction activities no longer threaten nests.

iii. Nests deposited within areas where emergency armoring construction activities have ceased or will not occur for 65 days must be marked as required by the Commission and left *in situ* unless other factors threaten the success of the nest.

3d. If possible, the contractor must not initiate work until daily notice has been received from the sea turtle Permit Holder that the morning survey has been completed. If work must be done during darkness or prior to receiving notice from the Permit Holder, the Department will take all practicable measures to determine if a nest is present and to avoid it. Photographs will be taken of the project area immediately before and after armoring activities, and the Service or Commission will be notified as soon as practicable, and provided the photographs and a brief account of the activities

3e. Sea turtle nests laid in the project area following issuance of a building permit and determined not to be vulnerable to disturbance of impending emergency armoring construction shall be marked and avoided.

4. To the extent feasible, dune restoration or creation included in the profile design (or project) should have a slope of 1.5:1 followed by a gradual slope of 4:1 for approximately 20 feet seaward on a high erosion beach (Figure 2). If another slope is more feasible in this high erosion area, the Department will meet with the Service to discuss this new slope. If it is found that the dune in front of the armoring structure is continually washed away, the Department must meet with the Service and the Commission to discuss other options.

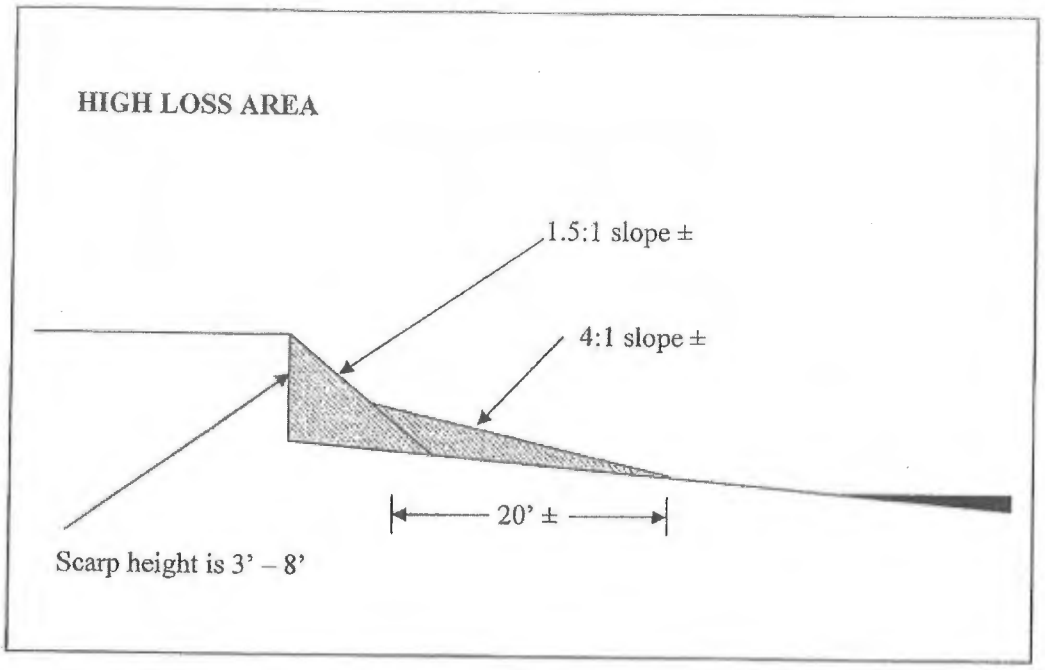


Figure 2. Recommended slope on a high erosion beach for sand placement activities that include the creation of a dune.

5. Beach compatible fill must be used in the construction of the dune system. Beach compatible fill is material that maintains the general character and functionality of the material occurring on the beach and in the adjacent dune and coastal system. Such material must be predominately of carbonate, quartz or similar material with a particle size distribution ranging between 0.062mm (4.0Φ) and 4.76mm (-2.25Φ) (classified as sand by either the Unified Soils or the Wentworth classification), must be similar in color and grain size distribution (sand grain frequency, mean and median grain size and sorting coefficient) to the material in the historic beach sediment at the disposal site, and must not contain:

   5a. Greater than 5 percent, by weight, silt, clay or colloids passing the #230 sieve (4.0φ);

   5b. Greater than 5 percent, by weight, fine gravel retained on the #4 sieve (- 2.25φ);

   5c. Coarse gravel, cobbles or material retained on the 3/4-inch sieve in a percentage or size greater than found on the native beach;

   5d. Construction debris, toxic material or other foreign matter; and

   5e. Material that will result in cementation of the beach.

If rocks or other non-specified materials appear on the surface of the filled beach in excess of 50 percent of background in any 10,000 square foot area, then surface rock should be removed from those areas. These areas must also be tested for subsurface rock percentage and remediated as required. If the natural beach exceeds any of the limiting parameters listed above, then the fill material must not exceed the naturally occurring level for that parameter.

6. Dune vegetation planting may occur on the dune face and the dune toe during the sea turtle nesting and hatching season under the following conditions.

6a. Daily early morning sea turtle nesting surveys must be conducted during the period from April 15 through November 30. Nest surveys must only be conducted by personnel with prior experience and training in nest surveys. Surveyors must have a valid Commission permit. Nest surveys must be conducted daily between sunrise and 9 a.m. No dune planting activity must occur until after the daily turtle survey and nest conservation and protection efforts have been completed.

6b. Nesting surveys must be initiated 65 days prior to dune planting activities or by April 15, whichever is later. Nesting surveys must continue through the end of the project or through November 30, whichever is earlier. Hatching and emerging success monitoring will involve checking nests beyond the completion date of the daily early morning nesting surveys.

6c. Any nests deposited in the dune planting area not requiring relocation for conservation purposes must be left *in situ.* and marked in accordance with the requirements of the Commission.

6d. If a nest is disturbed or uncovered during planting activity, the contractor, must cease all work and immediately contact the responsible turtle permit holder. If a nest(s) cannot be safely avoided during planting, all activity within the affected project site must be delayed until hatching and emerging success monitoring of the nest is completed.

6e. All dune-planting activities must be conducted by hand and only during daylight hours.

6f. All dune vegetation must consist of coastal dune species native to the local area; (i.e., native to coastal dunes in the respective county and grown from plant stock from that region of Florida).

6g. No use of heavy equipment (including trucks) must occur on the dunes or seaward for planting purposes. A lightweight (ATV type) vehicle, with tire pressures of 10 psi or less may be operated on the beach.

7. All street and traffic lighting under the Department's jurisdiction along the road must not be directly visible from the nesting beach and must be in accordance with the Coastal Roadway Lighting Manual (http://research.myfwc.com/engine/download_redirection_process.asp?file=manual2_0138.pdf&objid=2156&dltype=article), the City of Flagler Beach and Flagler County's Sea Turtle Lighting Ordinance.

   The following table is a list of streetlights that have caused sea turtle disorientations in past years. All streetlights under the Department's jurisdiction must be in compliance with the above noted manual and ordinance within one year after issuance of this opinion. Street lights not under the jurisdiction of the Department must be reported to the City of Flagler Beach, Commission, and Service.

Table 6. Sea turtle disorientations in the action area.

[illegible]	[illegible]
2208 South A1A	Parking lot, Streetlight, Rest/Bar
South of South 6th Street Walkover	Streetlight, Pier
North 4th Street at 30ft N of Walkover	Streetlight
1919 North A1A	Streetlight
2100 S A1A Nest ID# FB 14	Unknown
913 North A1A "Anchor Motel" Nest ID# FB 58	Streetlight (West side of SR A1A)
2500 South A1A - Nest ID# FB 61	Streetlight (West side of SR A1A), Hotel (Spot?)
2301 North A1A - Nest ID# FB 60	Streetlight (West side of SR A1A), Light on dune aimed at beach (Beverly Beach Beacon)
913 North A1A - Nest ID# FB 75	Streetlights (9th & 10th Streets, and Anchor Motel)
788 North A1A - Nest ID# FB 73	Streetlights (8th & SR A1A), Commercial Building north of 8th Street. (?)
2130 South A1A - Nest ID# FB 78	Streetlights (22nd Street & 2150 South A1A)

8. No temporary lighting of the beach is authorized, except during emergency construction. If required, hazard lighting on the adjacent roadway shall be positioned such that light is not directly visible from the beach. No additional permanent exterior lighting is authorized.

9. A meeting between representatives of the contractor, the Service, the Commission, and the permitted sea turtle surveyor, and other species surveyors as appropriate, must be held prior to the commencement of non-emergency work on this project. At least 10

business days advance notice must be provided prior to conducting this meeting. The meeting will provide an opportunity for explanation and/or clarification of the sea turtle protection measures as well as additional guidelines when non-emergency construction occurs during the early and/or late portions of the nesting season (April 15 through April 30 and November 1 through November 30) such as storing equipment, minimizing driving, and reporting within the work area, as well as follow-up meetings during construction.

10. The Department must submit an as-built drawing prior to the beginning of the first sea turtle nesting season that follows installation or within 30 days if construction is completed during the sea turtle nesting season. This submission will include sub-meter accuracy latitude and longitude coordinates that define the boundaries of the installed structure.

11. In the event the structure or its associated dune restoration fails, the Department must ensure all debris and structural material is removed from the nesting beach area. Removal of failed structures will take place outside the sea turtle nesting season (April 15 through November 30) unless it is determined by the Service to be less harmful to sea turtles to remove the structures and debris during the nesting season.

12. Upon completion of construction or removal of armoring, all construction materials and debris must be removed from the beach, including exposed fabric.

Emergency sand placement as a result of stormwater runoff from the road must include the following additional measures:

1. The drainage of the road must be diverted or contained to prevent stormwater runoff from transporting sand onto the beach. This includes areas along the road that have been previously identified and any new areas that have increased erosion on the beach due to the stormwater runoff.

2. Emergency sand placement as a result of the stormwater runoff must use beach quality sand, suitable for sea turtle nesting, successful incubation, and hatchling emergence. Placement of sand must be confined to the fullest extent possible to the upper dune and every effort must be made to prevent additional sand from being transported by water and deposited on the beach.

3. Following the emergency sand placement activities, the Department must meet with the Service and the Commission to discuss the time-period for fixing the road drainage issues prior to the following sea turtle nesting season.

4. If emergency sand placement activities will be conducted during the sea turtle nesting and hatching season (April 15 through November 30), surveys for nesting sea turtles must be conducted daily before work is conducted. In addition, sand placement

activities must be conducted only during daylight hours during the nesting season to avoid encountering nesting and hatchling turtles unless placement of sand higher on the dune would result in less deposition on the beach than allowing erosion to continue. After emergency sand placement activities occur, if nests are laid in areas where they may be affected by the activities, eggs must be relocated per the following requirements. Nests laid in the area of the sand placement activities must be relocated if possible prior to 9am on the morning following deposition, to minimize sea turtle nest burial, crushing of eggs, or nest excavation.

4a. Nesting surveys and egg relocations will only be conducted by personnel with prior experience and training in nesting survey and egg relocation procedures. Surveyors must have a valid Commission permit. Nesting surveys must be conducted daily between sunrise and 9 a.m.

4b. Only those nests that may be affected by emergency sand placement activities will be relocated. Nests requiring relocation must be moved if possible no later than 9 a.m. the morning following deposition to a nearby self-release beach site in a secure setting where artificial lighting will not interfere with hatchling orientation. Nest relocations in association with emergency sand placement activities must cease when construction activities no longer threaten nests.

4c. Nests deposited within areas where emergency sand placement activities have ceased or will not occur for 65 days must be marked in accordance with the requirements of the Commission and left *in situ*.

5. If construction equipment and materials have been used on the beach, they will be removed off the beach at night when feasible or must be stored in a manner that will minimize impacts to nesting and hatching sea turtles during the sea turtle nesting and hatching season.

Post Monitoring and Reporting:

1. Once a long-term armoring structure is in place, the Commission's sea turtle monitoring program is required to be augmented in the project area, as provided below, which will include the segment of beach where the armoring structure is located and the sandy beach 100 feet on either side of the structure, for 5 years post-construction as follows:

1a. Sea turtle nesting activity of the nesting beach in the vicinity of the project shall be reported from April 15 until all nests in the vicinity of the project have hatched and nest fate surveys have been completed. All nests deposited within the project site shall be marked and left in place. Such nests will be marked and the actual location of the clutch determined. The exact methods for such marking shall be coordinated between the Department, Commission, and the Service.

1b. Monitoring will be conducted to determine nest fate of all sea turtle nests deposited within the project areas. Data collected to assess nest fate shall include, but not be limited to: (1) the number of nests and false crawls, (2) the total number of eggs in each nest, (3) the number of eggs successfully hatched in each nest, (4) number of hatchlings that emerged from each nest, (5) number of live and dead hatchlings in each nest, (6) number of nests depredated, (7) number of nests washed out, (8) number of nests inundated, and (9) number of nests vandalized.

1c. If a nest fate assessment concludes that a nest successfully hatched, the following information must also be obtained, as applicable: (1) date of first hatchling emergence, (2) whether hatchlings safely reached the ocean, (3) number of hatchling disorientations, (4) number of hatchlings impeded in reaching the ocean due to debris or other obstacles, (5) number of nests scavenged after hatching, and (6) all other sea turtle-related information required by Commission.

1d. It is the responsibility of the Department to coordinate with the Commission to ensure that the project area and adjacent beach are surveyed for sea turtle nesting activity in order to obtain the data above. All nesting surveys, nest relocations screening or caging activities, etc. must be conducted only by persons with prior experience and training in these activities and who are duly authorized to conduct such activities through a valid permit issued by the Commission.

2. The Department must complete a survey of all lighting visible from the beach using standard techniques for such a survey. The surveys shall document all lighting visible from the beach by May 15 of that nesting season. For each light source visible, it must be documented that the property owner(s) have been notified of the problem light with recommendations for correcting the light. Recommendations must be in accordance with the county's and city's specific lighting ordinance. A summary report of each survey including documentation of property owner notification must be submitted to the Service by December 15 of that year. After the final report is completed, a meeting must be held with the Department, Commission, and the Service to discuss the survey report and documented sea turtle disorientations.

3. Annual reports describing the actions taken to implement the terms and conditions of this incidental take statement must be submitted to the Service by February 15th of the year following completion of the proposed work through the 2017 nesting season. This includes dates of actions, linear feet and volume of sand placement, linear feet and volume of rock revetment, and linear feet of seawall construction. These activities must be correlated to a milepost along SR A1A.

4. In the event a sea turtle nest is excavated during construction activities, the permitted person responsible for egg relocation for the project must be notified so the eggs can be moved to a suitable relocation site. Upon locating an injured sea turtle adult, hatchling, or egg that may have been harmed or destroyed as a direct or indirect result of the

project, the Department must notify the Commission's Wildlife Alert at 1-888-404-FWCC (3922) and the Service's Jacksonville Field Office (904) 731-3336. Care must be taken in handling injured turtles or eggs to ensure effective treatment or disposition, and in handling dead specimens to preserve biological materials in the best possible state for later analysis.

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. The Service believes that incidental take will be limited to no more than 3,000 linear feet of sea turtle nesting habitat that will be degraded as a result of construction of the emergency armoring structures and the subsequent replacement of these structures with permanent armoring. If, during the course of the action, this level of incidental take is exceeded, such incidental take represents new information requiring reinitiation of consultation and review of the reasonable and prudent measures provided. The Department must immediately provide an explanation of the causes of the taking and review with Service the need for possible modification of the reasonable and prudent measures.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

1. The Administration and Department should provide funding or technical support for research to evaluate the effects of coastal armoring structures on sea turtles. Science-based monitoring is required to empirically evaluate the short-term and long-term impacts coastal armoring structures may have on nesting sea turtles, their eggs, and hatchlings.

2. The Administration and Department should work collaboratively with local and county governments and State and Federal agencies to develop and implement coastal dune restoration projects to stabilize and enhance sea turtle nesting habitat along their facilities adjacent to coastal resources.

3. The Administration and Department are encouraged to evaluate the feasibility study currently being conducted by the Corps, once completed, and implement or participate in the implementation of long-term solutions resulting from the study, if feasible.

REINITIATION NOTICE

This concludes formal consultation on the action outlined in the request. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal

agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

If you have any questions regarding this biological opinion, please contact Todd Mecklenborg at (727) 820-3705.

Sincerely,

for David L. Hankla
Field Supervisor

NATIONWIDE PERMIT 3
DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
FINAL NOTICE OF ISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS
FEDERAL REGISTER
AUTHORIZED MARCH 19, 2012

Maintenance. (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and/or the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. The placement of new or additional riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in

their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

NATIONWIDE PERMIT CONDITIONS

The following General Conditions must be followed in order for any authorization by a NWP to be valid:

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA

section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of

the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____

(Transferee)

_____

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the

vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific

conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

FURTHER INFORMATION

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence

of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or

flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through

which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent

mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

NOTICE ABOUT WEB LINKS IN THIS DOCUMENT:
The web links (both internal to our District and any external links to collaborating agencies) in this document are valid at the time of publication. However, the Wilmington District Regulatory Program web page addresses, as with other agency web sites, may change over the timeframe of the five-year Nationwide Permit renewal cycle, in response to policy mandates or technology advances. While we will make every effort to check on the integrity of our web links and provide re-direct pages whenever possible, we ask that you report any broken links to us so we can keep the page information current and usable. We apologize in advanced for any broken links that you may encounter, and we ask that you navigate from the regulatory home page (wetlands and stream permits) of the Wilmington District Corps of Engineers, to the "Permits" section of our web site to find links for pages that cannot be found by clicking directly on the listed web link in this document.

Final 2012 Regional Conditions for Nationwide Permits (NWP) in the Wilmington District

1.0 Excluded Waters

The Corps has identified waters that will be excluded from the use of all NWP's during certain timeframes. These waters are:

1.1 Anadromous Fish Spawning Areas

Waters of the United States identified by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas are excluded during the period between February 15 and June 30, without prior written approval from NCDMF or NCWRC and the Corps.

1.2 Trout Waters Moratorium

Waters of the United States in the twenty-five designated trout counties of North Carolina are excluded during the period between October 15 and April 15 without prior written approval from the NCWRC. (See Section 2.7 for a list of the twenty-five trout counties).

1.3 Sturgeon Spawning Areas as Designated by the National Marine Fisheries Service (NMFS)

Waters of the United States designated as sturgeon spawning areas are excluded during the period between February 1 and June 30, without prior written approval from the NMFS.

2.0 Waters Requiring Additional Notification

The Corps has identified waters that will be subject to additional notification requirements for activities authorized by all NWP's. These waters are:

2.1 Western NC Counties that Drain to Designated Critical Habitat

For proposed activities within Waters of the U.S. that require a Pre-Construction Notification pursuant to General Condition 31 (PCN) and are located in the sixteen counties listed below, applicants must provide a copy of the PCN to the US Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. This PCN must be sent concurrently to the US Fish and Wildlife Service and the Corps Asheville Regulatory Field Office. Please see General Condition 18 for specific notification requirements related to Federally Endangered Species and the following website for information on the location of designated critical habitat.

Counties with tributaries that drain to designated critical habitat that require notification to the Asheville US Fish and Wildlife Service: Avery, Cherokee, Forsyth, Graham, Haywood, Henderson, Jackson, Macon Mecklenburg, Mitchell, Stokes, Surry, Swain, Transylvania, Union and Yancey.

Website and office addresses for Endangered Species Act Information:

The Wilmington District has developed the following website for applicants which provides guidelines on how to review linked websites and maps in order to fulfill NWP general condition 18 requirements: http://www.saw.usace.army.mil/wetlands/ESA

Applicants who do not have internet access may contact the appropriate US Fish and Wildlife Service offices listed below or the US Army Corps of Engineers at (910) 251- 4633:

US Fish and Wildlife Service
Asheville Field Office
160 Zillicoa Street
Asheville, NC 28801
Telephone: (828) 258-3939

Asheville US Fish and Wildlife Service Office counties: All counties west of and including Anson, Stanly, Davidson, Forsyth and Stokes Counties

US Fish and Wildlife Service
Raleigh Field Office
Post Office Box 33726
Raleigh, NC 27636-3726
Telephone: (919) 856-4520

Raleigh US Fish and Wildlife Service Office counties: all counties east of and including Richmond, Montgomery, Randolph, Guilford, and Rockingham Counties.

2.2 Special Designation Waters

Prior to the use of any NWP in any of the following identified waters and contiguous wetlands in North Carolina, applicants must comply with Nationwide Permit General Condition 31 (PCN). The North Carolina waters and contiguous wetlands that require additional notification requirements are:

"Outstanding Resource Waters" (ORW) or "High Quality Waters" (HQW) as designated by the North Carolina Environmental Management Commission; "Inland Primary Nursery Areas" (IPNA) as designated by the NCWRC; "Contiguous Wetlands" as defined by the North Carolina Environmental Management Commission; or "Primary Nursery Areas" (PNA) as designated by the North Carolina Marine Fisheries Commission.

2.3 Coastal Area Management Act (CAMA) Areas of Environmental Concern

Non-federal applicants for any NWP in a designated "Area of Environmental Concern" (AEC) in the twenty (20) counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA) must also obtain the required CAMA permit. Development activities for non-federal projects may not commence until a copy of the approved CAMA permit is furnished to the appropriate Wilmington District Regulatory Field Office (Wilmington Field Office – 69 Darlington Avenue, Wilmington, NC 28403 or Washington Field Office – 2407 West 5th Street, Washington, NC 27889).

2.4 Barrier Islands

Prior to the use of any NWP on a barrier island of North Carolina, applicants must comply with Nationwide Permit General Condition 31 (PCN).

2.5 Mountain or Piedmont Bogs

Prior to the use of any NWP in a Bog classified by the North Carolina Wetland Assessment Methodology (NCWAM), applicants shall comply with Nationwide Permit General Condition 31 (PCN). The latest version of NCWAM is located on the NC DWQ web site at: http://portal.ncdenr.org/web/wq/swp/ws/pdu/ncwam .

2.6 Animal Waste Facilities

Prior to use of any NWP for construction of animal waste facilities in waters of the US, including wetlands, applicants shall comply with Nationwide Permit General Condition 31 (PCN).

2.7 Trout Waters

Prior to any discharge of dredge or fill material into streams or waterbodies within the twenty-five (25) designated trout counties of North Carolina, the applicant shall comply with Nationwide Permit General Condition 31 (PCN). The applicant shall also provide a copy of the notification to the appropriate NCWRC office to facilitate the determination of any potential

impacts to designated Trout Waters. Notification to the Corps of Engineers will include a statement with the name of the NCWRC biologist contacted, the date of the notification, the location of work, a delineation of wetlands, a discussion of alternatives to working in the mountain trout waters, why alternatives were not selected, and a plan to provide compensatory mitigation for all unavoidable adverse impacts to mountain trout waters.

NCWRC and NC Trout Counties

Western Piedmont Region Coordinator	Alleghany	Caldwell	Watauga
20830 Great Smoky Mtn. Expressway	Ashe	Mitchell	Wilkes
Waynesville, NC 28786	Avery	Stokes	
Telephone: (828) 452-2546	Burke	Surry	

Mountain Region Coordinator	Buncombe	Henderson	Polk
20830 Great Smoky Mtn. Expressway	Cherokee	Jackson	Rutherford
Waynesville, NC 28786	Clay	Macon	Swain
Telephone: (828) 452-2546	Graham	Madison	Transylvania
Fax: (828) 452-7772	Haywood	McDowell	Yancey

3.0 List of Corps Regional Conditions for All Nationwide Permits

The following conditions apply to all Nationwide Permits in the Wilmington District:

3.1 Limitation of Loss of Perennial Stream Bed

NWPs may not be used for activities that may result in the loss or degradation of greater than 300 total linear feet of perennial, intermittent or ephemeral stream, unless the District Commander has waived the 300 linear foot limit for ephemeral and intermittent streams on a case-by-case basis and he determines that the proposed activity will result in minimal individual and cumulative adverse impacts to the aquatic environment. Loss of stream includes the linear feet of stream bed that is filled, excavated, or flooded by the proposed activity. Waivers for the loss of ephemeral and intermittent streams must be in writing and documented by appropriate/accepted stream quality assessments*. This waiver only applies to the 300 linear feet threshold for NWPs.

*NOTE: Applicants should utilize the most current methodology prescribed by Wilmington District to assess stream function and quality. Information can be found at:

http://www.saw.usace.army.mil/wetlands/permits/nwp/nwp2012 (see "Quick Links")

3.2 Mitigation for Loss of Stream Bed

For any NWP that results in a loss of more than 150 linear feet of perennial and/or ephemeral/intermittent stream, the applicant shall provide a mitigation proposal to compensate for more than minimal individual and cumulative adverse impacts to the aquatic environment. For stream losses less than 150 linear feet, that require a PCN, the District Commander may determine, on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effect on the aquatic environment.

3.3 Pre-construction Notification for Loss of Streambed Exceeding 150 Feet.

Prior to use of any NWP for any activity which impacts more than 150 total linear feet of perennial stream or ephemeral/ intermittent stream, the applicant must comply with Nationwide Permit General Condition 31 (PCN). This applies to NWPs that do not have specific notification requirements. If a NWP has specific notification requirements, the requirements of the NWP should be followed.

3.4 Restriction on Use of Live Concrete

For all NWPs which allow the use of concrete as a building material, live or fresh concrete, including bags of uncured concrete, may not come into contact with the water in or entering into waters of the US. Water inside coffer dams or casings that has been in contact with wet concrete shall only be returned to waters of the US when it is no longer poses a threat to aquatic organisms.

3.5 Requirements for Using Riprap for Bank Stabilization

For all NWPs that allow for the use of riprap material for bank stabilization, the following measures shall be applied:

3.5.1. Filter cloth must be placed underneath the riprap as an additional requirement of its use in North Carolina waters.

3.5.2. The placement of riprap shall be limited to the areas depicted on submitted work plan drawings.

3.5.3. The riprap material shall be clean and free from loose dirt or any pollutant except in trace quantities that would not have an adverse environmental effect.

3.5.4. It shall be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal conditions.

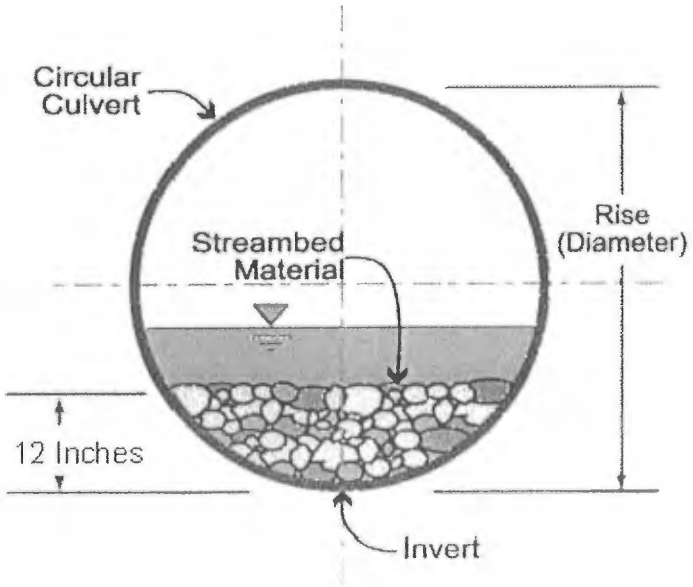
3.5.5. The riprap material shall consist of clean rock or masonry material such as, but not limited to, granite, marl, or broken concrete.

3.5.6. A waiver from the specifications in this Regional Condition may be requested in writing. The waiver will only be issued if it can be demonstrated that the impacts of complying with this Regional condition would result in greater adverse impacts to the aquatic environment.

3.6 Safe Passage Requirements for Culvert Placement

For all NWPs that involve the construction/installation of culverts, measures will be included in the construction/installation that will promote the safe passage of fish and other aquatic organisms. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity. The width, height, and gradient of a proposed culvert should be such as to pass the average historical low flow and spring flow without adversely altering flow velocity. Spring flow should be determined from gage data, if available. In the absence of such data, bankfull flow can be used as a comparable level.

In the twenty (20) counties of North Carolina designated as coastal counties by the Coastal Area Management Act (CAMA): All pipes/culverts must be sufficiently sized to allow for the burial of the bottom of the pipe/culvert at least one foot below normal bed elevation when they are placed within the Public Trust Area of Environmental Concern (AEC) and/or the Estuarine Waters AEC as designated by CAMA, and/or all streams appearing as blue lines on United States Geological Survey (USGS) 7.5-minute quadrangle maps.



In all other counties: Culverts greater than 48 inches in diameter will be buried at least one foot below the bed of the stream. Culverts 48 inches in diameter or less shall be buried or placed on the stream bed as practicable and appropriate to maintain aquatic passage, and every effort shall be made to maintain the existing channel slope. The bottom of the culvert must be placed at a

depth below the natural stream bottom to provide for passage during drought or low flow conditions.

Culverts are to be designed and constructed in a manner that minimizes destabilization and head cutting. Destabilizing the channel and head cutting upstream should be considered and appropriate actions incorporated in the design and placement of the culvert.

A waiver from the depth specifications in this condition may be requested in writing. The waiver will be issued if it can be demonstrated that the proposal would result in the least impacts to the aquatic environment.

All counties: Culverts placed within riparian and/or riverine wetlands must be installed in a manner that does not restrict the flow and circulation patterns of waters of the United States. Culverts placed across wetland fills purely for the purposes of equalizing surface water do not have to be buried.

3.7 Notification to NCDENR Shellfish Sanitation Section

Applicants shall notify the NCDENR Shellfish Sanitation Section prior to dredging in or removing sediment from an area closed to shell fishing where the effluent may be released to an area open for shell fishing or swimming in order to avoid contamination from the disposal area and cause a temporary shellfish closure to be made. Such notification shall also be provided to the appropriate Corps of Engineers Regulatory Field Office. Any disposal of sand to the ocean beach should occur between November 1 and April 30 when recreational usage is low. Only clean sand should be used and no dredged sand from closed shell fishing areas may be used. If beach disposal were to occur at times other than stated above or if sand from a closed shell fishing area is to be used, a swimming advisory shall be posted, and a press release shall be issued by the permittee.

3.8 Preservation of Submerged Aquatic Vegetation

Adverse impacts to Submerged Aquatic Vegetation (SAV) are not authorized by any NWP within any of the twenty coastal counties defined by North Carolina's Coastal Area Management Act of 1974 (CAMA).

3.9 Sedimentation and Erosion Control Structures and Measures

3.9.1. All PCNs will identify and describe sedimentation and erosion control structures and measures proposed for placement in waters of the US. The structures and measures should be depicted on maps, surveys or drawings showing location and impacts to jurisdictional wetlands and streams.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re:

EMERGENCY AUTHORIZATION FOR REPAIRS, REPLACEMENT, RESTORATION, AND CERTAIN OTHER MEASURES MADE NECESSARY BY HURRICANE MATTHEW

OGC NO. 16-1319

EMERGENCY FINAL ORDER

Under Sections 120.569(2)(n), 252.36, and 252.46, Florida Statutes, and upon consideration of the State of Florida Executive Order No. 16-230 and the following findings of fact, the State of Florida Department of Environmental Protection (Department) enters this Emergency Final Order (Order), including Findings of Fact and Conclusions of Law, in response to the imminent or immediate danger to the public health, safety, and welfare of the citizens of the State of Florida resulting from the devastation wrought by Hurricane Matthew (hereinafter "the Hurricane").

FINDINGS OF FACT

1. Hurricane Matthew is a major Hurricane traveling north through the Bahamas. The National Hurricane Center forecasts that the Hurricane will turn northwest toward Florida and travel along Florida's east coast. The Hurricane poses a severe threat to the State of Florida and requires that timely precautions are taken to protect the communities and critical infrastructure and the general welfare of this State. The Hurricane is likely to cause significant impact and widespread damage throughout the State of Florida which shall constitute the area covered by this Emergency Final Order. This area shall herein be referred to as the "Emergency Area."

2. By State of Florida Executive Order No. 16-230, the Governor declared that a state of emergency exists throughout the state, based upon the serious threat to the public health, safety, and welfare posed by the Hurricane.

3. The Department finds that the Hurricane has created a state of emergency threatening the public health, safety, welfare, and property throughout the Emergency Area. As a result of the emergency, immediate action by Florida's citizens and government is necessary to repair, replace, and restore structures, equipment, surface water management systems, works, and other systems damaged by the Hurricane.

4. The Department finds that an emergency authorization is required to address the need for immediate action because the normal procedures for obtaining the necessary authorizations would not result in sufficiently timely action to address the emergency.

5. The Department finds that immediate, strict compliance with the provisions of the statutes, rules, or orders noted within this Order would prevent, hinder, or delay necessary action in coping with the emergency, and that the actions authorized under this Order are narrowly tailored to address the immediate need for action and are procedurally appropriate under the circumstances.

CONCLUSIONS OF LAW

1. Based on the findings recited above, it is hereby concluded that the emergency caused by the Hurricane poses an immediate danger to the public health, safety, or welfare and requires an immediate order of the Department.

2. Under State of Florida Executive Order No. 16-230, and Sections 120.569(2)(n), 252.36, and 252.46, Florida Statutes, the Secretary, or designee, of the Department is authorized to issue this Emergency Final Order.

3. Suspension of statutes and rules as noted within this Order is required so as not to prevent, hinder, or delay necessary action in coping with the emergency.

THEREFORE, IT IS ORDERED:

A. WASTE MANAGEMENT

Within the Emergency Area:

1. Storage Tank Systems

Owners and operators of storage tank systems regulated under Chapters 62-761 and 62-762, Florida Administrative Code, and their licensed engineers and contractors, are authorized to make all necessary repairs to restore essential services and repair or replace (as necessary) all structures, equipment, and appurtenances of the systems to their pre-Hurricane permitted or registered condition without prior notice to the Department. Within thirty (30) days of commencing the work of such repair or replacement, however, the owner or operator shall notify the Department in writing, describing the nature of the work, giving its DEP Facility I.D. for the location, and providing the name, address, and telephone number of the representative of the owner or operator to contact concerning the work.

2. Solid Waste Management

a. Field authorizations may be issued prior to or following a site inspection by Department personnel or a delegated local program for staging areas to be used for temporary storage and chipping, grinding, or burning of Hurricane-generated

debris. Field authorizations may be requested by providing a notice to the District Office of the Department containing a description of the staging area design and operation, the location of the staging area, and the name, address, and telephone number of the site manager. Field authorizations also may be issued by Department staff without prior notice. Written records of all field authorizations shall be created and maintained by Department staff. Field authorizations may include specific conditions for the operation and closure of the staging area, and may include a required closure date which extends beyond the expiration date of this Order. Staging areas shall avoid wetlands and other surface waters to the greatest extent possible; such areas that are used or affected must be fully restored upon cessation of use of the area. Staging areas must cease operation, and all Hurricane-generated debris must be removed from the site, by the expiration date of this Order, unless a different closing date or closure conditions are specified in the field authorization. Failure to comply with the conditions of the field authorization, or failure to adequately close the site by the required closure date, may result in enforcement actions by the Department. Field authorizations issued prior to the effective date of this Order remain in effect but may be modified by the Department to include conditions and closure dates as specified herein.

b. Hurricane-generated vegetative debris which is managed at an authorized staging area may be disposed of in permitted lined or unlined landfills, permitted land clearing debris facilities, or permitted construction and demolition debris disposal facilities. Such vegetative debris may also be managed at a permitted waste processing facility or a registered yard trash processing facility in accordance with the terms of the applicable rules and permit conditions.

c. Construction and demolition debris that is mixed with other Hurricane-generated debris need not be segregated from other solid waste prior to disposal in a lined landfill. Construction and demolition debris that is either source-separated or is separated from other Hurricane-generated debris at an authorized staging area, or at another area specifically authorized by the Department, may be managed at a permitted construction and demolition debris disposal or recycling facility upon approval by the Department of the methods and operational practices used to inspect the waste during segregation.

d. Except as otherwise specifically provided herein, Hurricane-generated debris shall be disposed of in a Class I landfill or, except for asbestos-containing materials, in a waste-to-energy facility. Non-recyclables and residuals generated from segregation of Hurricane-generated debris shall also be disposed of in a Class I landfill or waste-to-energy facility.

e. Ash residue from the combustion of Hurricane-generated vegetative debris may be disposed of in a permitted disposal facility, or may be land spread in any areas approved by local government officials except in wellfield protection areas or water bodies.

f. Ash from the combustion of other Hurricane-generated debris shall be disposed of in a Class I landfill. Metals or other non-combustible materials segregated from the ash residue may also be disposed of in an unlined, permitted landfill.

g. Unsalvageable refrigerators and freezers containing solid waste such as rotting food that may create a sanitary nuisance may be disposed of in a Class I landfill; provided, however, that chlorofluorocarbons and capacitors must be removed and

recycled to the greatest extent practicable using techniques and personnel meeting the requirements of 40 CFR Part 82.

h. Permitted landfills, waste-to-energy facilities, and transfer stations which accept Hurricane-generated debris in accordance with the terms of this Order may accept Hurricane-generated debris for disposal or storage without the need to first modify existing solid waste permits or certifications. Operators of landfills shall seek modifications of their existing permits to address any long-term impacts of accepting Hurricane-generated debris on operations and closure that are not addressed in existing permits. Long-term impacts are those which will extend past the expiration date of this Order. The requests for modification shall be submitted as soon as possible, but no later than the expiration date of this Order. No permit fee will be required for any modifications necessitated solely by the Hurricane cleanup activities. This paragraph does not authorize the permanent lateral or vertical expansion of any facility beyond its permitted limits.

i. Domestic wastewater residuals may be disposed of in Class I landfills even if such residuals meet the definition of a liquid waste found in Rule 62-701.200(65), Florida Administrative Code, provided that such disposal is approved in advance by the Department and that the material is managed to the extent practicable so as to minimize liquid content, odors, and runoff.

3. <u>Hazardous Waste Management</u>

A blanket approval of time extensions under Chapter 62-730, Florida Administrative Code, is necessary within the Emergency Area for hazardous waste generators for the storage of their hazardous wastes on-site, pending the cleanup of the

Hurricane damage and restoration of essential services. The rules authorize a thirty-day extension because of unforeseen and uncontrollable circumstances. The specific effects of the Hurricane were unforeseen and uncontrollable. Therefore, to avoid having to issue a potentially large number of individual approvals on a case-by-case basis and waste limited agency resources during the time of emergency, the Department authorizes a general extension of time of thirty (30) days from the expiration of this Order for all such hazardous waste generators for the storage of their hazardous wastes on-site, in the counties within the Emergency Area.

B. AIR RESOURCE MANAGEMENT

Within the Emergency Area:

1. <u>Air Curtain Incinerators</u>

Local governments or their agents may conduct the burning of Hurricane-generated yard trash, other vegetative debris, and untreated wood from construction and demolition debris in air curtain incinerators in accordance with the provisions of Section 403.7071(6), Florida Statutes. In operating any air curtain incinerator pursuant to this Order, the pit width shall not exceed 12 feet, vertical side walls shall be maintained, and waste material shall not be loaded into the air curtain incinerator such that it protrudes above the level of the air curtain. Ash shall not be allowed to build up in the pit higher than one-third the pit depth or to the point where the ash begins to impede combustion, whichever level is lower. Refractory-lined air curtain incinerators may operate 24 hours per day. Air curtain incinerators without refractory-lined walls may operate 24 hours per day provided reasonable efforts are made to prevent nuisance

smoke. Notwithstanding the provisions of this paragraph, the burning of asbestos-containing materials or hazardous waste is prohibited.

2. **Open Pile Burning**

Only vegetative material can be burned on an open pile. Open pile burning of vegetative debris is managed under the authority of the Florida Forest Service in the Department of Agriculture and Consumer Services, and the Department will defer to decisions made by that agency, provided that burning does not occur in wetlands or other surface waters. Open pile burning shall avoid adversely affecting wetlands and other surface waters to the greatest extent possible; any wetland or other surface water areas that are used or affected must be fully restored upon cessation of use of the area in consultation with the Department.

3. **Other Air Pollution Sources**

The Department authorizes the minor repair of any previously permitted stationary source of air pollution that was damaged by the Hurricane to restore it to its previously permitted condition without prior notice to the Department. Within thirty (30) days of commencing such repairs, however, the permittee shall notify the Department in writing, stating the location and nature of the work, and providing the name, address, and telephone number of the representative of the permittee to contact concerning the work. Minor repairs are repairs that would not constitute reconstruction under any definition of 40 CFR Part 60, 61, or 63, and that could not affect potential to emit any pollutant. Repairs that would constitute reconstruction under any definition of 40 CFR Part 60, 61, or 63, and that could affect potential to emit any pollutant are not authorized by this Order.

4. **Asbestos Cleanup**

The Department waives the requirement for 10-day prior notification for emergency demolition or emergency cleanup of asbestos-containing material resulting from the Hurricane. Within one (1) business day of commencing such demolition or cleanup, however, the person responsible for such work shall notify the Department in writing. The notification shall be consistent with the information on the Notice of Demolition or Asbestos Renovation, and shall include the DEP Facility I.D. for the location, and providing the name, address, and telephone number of the representative of the owner or operator to contact concerning the work. The procedures in 40 CFR 61 Subpart M for handling asbestos-containing material shall be complied with during demolition and cleanup. Asbestos-containing material shall be disposed of in a Class I or III landfill in accordance with Rule 62-701.520(3), Florida Administrative Code. Burning of asbestos containing material is prohibited.

C. WATER RESOURCE MANAGEMENT

Within the Emergency Area:

1. **Definitions**

The following definitions apply to activities authorized under Section C of this Order:

a. For purposes of subsection C.2. of this Order, the term "structures" includes:

(1) Utility infrastructure, including wastewater treatment plants, substations, lift stations, solid and hazardous waste facilities, utility lines (including transmission and

distribution), poles, towers, support structures, cables, conduits, outfalls, intake structures, and pipelines;

(2) Roads, bridges, culverts, driveways, sidewalks, bike paths, and other similar public and private infrastructure;

(3) Public, private, and commercial habitable and non-habitable buildings, and structures ancillary to these buildings, such as garages, cabanas, storage sheds, bath houses, pools, and decks;

(4) Piers (including docks, boardwalks, observation platforms, boat houses, and gazebos), and pilings;

(5) Shore-stabilization structures, such as seawalls, bulkheads, revetments, breakwaters, and groins;

(6) Fences, signs, and billboards; and

(7) Buoys, navigational aids, and channel markers.

b. For purposes of subsection C.2. of this Order, the term "drainage systems" includes ditches, canals, ponds, swales, and other surface water conveyances; dams, weirs, dikes, and levees; underdrains, outfalls, and associated water control structures.

c. For purposes of subsections C.2., C.3., and C.4. of this Order, the term "water dependent activity" means an activity that can only be conducted in, on, over, or adjacent to water areas because the activity requires direct access to the waterbody or state owned submerged lands for transportation, recreation, energy production or transmission, or source of water, and where the use of the water or state owned submerged lands is an integral part of the activity.

d. For purposes of subsections C.2. and C.3. of this Order, the term "completely destroyed" means none of the structure that existed before the Hurricane remains standing. For example, if at least one piling of a dock or pier remains in place as constructed, then the structure has not been completely destroyed.

e. For purposes of this Order, the term "water management districts" shall mean the Northwest Florida, St. Johns River, Suwannee River, Southwest Florida, and South Florida Water Management Districts, as they are affected within the Emergency Area.

2. Environmental Resource, Dredge and Fill, and Surface Water Management Activities

This subsection applies to activities located in uplands and waters of the state, including wetlands, but excludes activities located along the sandy beaches or inlets fronting the Atlantic Ocean and the Gulf of Mexico seaward of the Coastal Construction Control Line (CCCL) in counties where a CCCL has been established (these activities are addressed in subsection C.3. of this Order). The public is advised that Sections 403.813(1)(b), (d), (e), (f), (g), (h), (j), (l), (n), (p), or (t), Florida Statutes, and the corresponding rule exemptions of the Department and water management districts, authorize certain repair, restoration, and replacement activities, provided the terms, conditions, and limitations of the exemptions are followed. Such activities located in, on, or over state owned submerged lands that do not qualify for consent under Rule 18-21.005(1)(b), Florida Administrative Code, are hereby granted a Letter of Consent under Rule 18-21.005(1)(c), Florida Administrative Code, provided all the terms and conditions of those rules are met (including certain restrictions for activities performed within

aquatic preserves and Monroe County), and provided that activities that require an easement under Rule 18-21.005(1)(f), Florida Administrative Code, must obtain the applicable state owned submerged lands easement under Chapter 18-21, Florida Administrative Code, within one year of expiration of this Order. This Order does not limit the provisions of those statutory and rule provisions. The following activities are authorized to be undertaken in the Emergency Area to repair, restore, or replace structures, land, and submerged contours to the conditions that were authorized or otherwise legally existing immediately prior to the Hurricane, provided the repair and restoration activities do not result in any expansion, addition, or relocation of the existing structure or systems, subject to the limitations in this Order. However, this Order does not authorize the construction of structures that did not exist prior to the Hurricane, unless specifically authorized below.

a. No Notice Required

The following activities are authorized to be conducted under this Order without notification to the Department or water management district:

(1) Temporary and permanent repair or restoration of structures and drainage systems that are not completely destroyed to the conditions, dimensions, and configurations that were authorized or otherwise legally existing immediately prior to the Hurricane, provided the repair and restoration activities do not result in any expansion, addition, or relocation of the existing structure or systems, and provided any such structures or drainage systems in, on, or over state owned submerged lands are water dependent. This may include the use of different construction materials or minor

deviations to allow upgrades to current structural and design standards, or to replace a seawall with a riprap revetment.

(2) The restoration (regrading, dredging, or filling) by local, regional, and state governments of upland surfaces, wetlands, and submerged land contours to the conditions and configurations that were authorized or otherwise legally existing immediately prior to the Hurricane, provided the restoration does not result in any expansion or addition of land or deepening of waters beyond that which existed immediately prior to the Hurricane, subject to the following limits:

(a) The removal or deepening of plugs formerly separating canals from other waters is specifically not authorized by this Order;

(b) In the case of dredging, all excavated material shall either be deposited on uplands that are diked or otherwise sloped or designed to prevent any discharge into wetlands or other surface waters, or shall be used to restore bottom contours and shorelines to the conditions existing immediately prior to the Hurricane, subject to (c), below;

(c) In the case where upland or dredged material is placed in water to restore pre-existing conditions, only clean material (free from debris and pollutants) from the uplands that existed prior to the Hurricane may be used in the restoration, and no change (from the conditions that legally existed immediately prior to the Hurricane) in the slope of the land or the type, nature, or configuration of any pre-existing shoreline stabilization materials is authorized (e.g., sloping revetments cannot be replaced with vertical seawalls, and rock riprap cannot be replaced with interlocking blocks);

(d) Best management practices and devices such as hay bales, mulch, and floating turbidity screens shall be used to prevent violations of state water quality standards for turbidity during the performance of restoration activities, in accordance with the guidelines and specifications in the *Florida Stormwater, Erosion, and Sediment Control Inspector's Manual* (Florida Department of Environmental Protection and Florida Department of Transportation, Sixth Impression, July 2008, http://www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf), and the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual* (HydroDynamics Incorporated in cooperation with Stormwater Management Academy, June 2007, http://www.dot.state.fl.us/construction/Engineers/Environment/PagesErosionSedimentManual_0309.pdf). Best management practices also shall be used to prevent erosion and retain sediment of all newly established or restored exposed shorelines during and after the restoration activities, which may include methods such as planting of temporary and permanent vegetation, and placing of clean natural rock or concrete rubble riprap;

(e) Any fill that is deposited to restore a former shoreline, and any riprap that is used to stabilize a shoreline, must not be placed any farther waterward than the toe of slope of the shoreline that legally existed immediately prior to the Hurricane. If the pre-Hurricane shoreline was stabilized with a functioning seawall or riprap, the seawall or riprap may be restored at its former location or within 18 inches (or, within an aquatic preserve, 1 foot) waterward of the location where the seawall or riprap legally existed immediately prior to the Hurricane, as measured from the face of the existing seawall

slab to the face of restored seawall slab or from the front slope of the existing riprap to the front slope of the restored riprap; and

(f) This section shall not constitute authorization to fill submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, except as provided above.

(3) Removal of debris, including sunken or grounded vessels, vegetation, and structural remains that have been deposited into waters, wetlands, or uplands by the Hurricane, where such removal does not result in filling of wetlands or other surface waters, or dredging that creates or expands surface waters. All removed materials must be deposited on self-contained uplands and must be managed in accordance with Department rules or provisions of this Order.

b. Field and Individual Authorization Required

(1) Field authorizations may be issued following a site inspection by Department or water management district personnel to restore structures and property to authorized or otherwise legally existing conditions that existed immediately prior to the Hurricane, recover property, protect property from further damage, maintain navigation, or protect public health, safety, and welfare, when such activities are not otherwise authorized by statutory or rule exemptions or under paragraph C.2.a. of this Order. Specifically, field authorizations may be issued for:

(a) Activities including the replacement of structures that are completely destroyed;

(b) Activities on state owned submerged lands that are not water dependent;

(c) Restoration (regrading, dredging, or filling) of the contours of uplands, wetlands, and submerged bottoms by parties other than local, regional, or state governments;

(d) Trimming or alteration of mangroves that threaten public health, safety, welfare, or property, or that currently interfere with navigation;

(e) Removal of debris, including sunken or grounded vessels, vegetation, and structural remains that has been deposited into waters, wetlands, or uplands by the Hurricane, the removal of which requires filling of wetlands or other surface waters, or dredging that creates or expands wetlands or other surface waters. Any wetlands or other surface waters that are dredged or filled to affect such removal must be restored to the contours and conditions that existed before the Hurricane; and

(f) Other activities determined by Department or water management district personnel as having the potential to result in only minimal adverse individual or cumulative impact on water resources and water quality.

(2) Field authorizations to replace structures shall not preclude the use of different construction materials or minor deviations to allow upgrades to current structural and design standards, including building codes, or to a more environmentally compatible design, as determined by the Department or water management district, than existed immediately prior to the Hurricane.

(3) Field authorizations may be requested by providing a notice to the District Office of the Department or water management district containing a description of the work requested, the DEP Facility I.D. for the location, and providing the name, address, and telephone number of the representative of the owner or operator to contact

concerning the work. Field authorizations also may be issued by Department or water management district personnel without prior notice. Field authorizations may not be issued unless requested on or before November 2, 2016. Written records of all field authorizations shall be created and maintained by Department and water management district personnel. Field authorizations may include specific conditions for the construction, operation, and maintenance of the authorized activities. Field authorizations issued prior to the effective date of this Order remain in effect for the duration specified in the field authorization, but may be extended through written modification by the Department or water management district in accordance with the provisions of paragraph C.4.h. of this Order. Failure to comply with the conditions of the field authorization may result in enforcement actions by the Department or water management district.

3. **Coastal Construction Control Line Activities**

This section applies to activities conducted within the Emergency Area seaward of the CCCL as established by Chapter 62B-26, Florida Administrative Code. Emergency permits may be issued by the Division of Water Resource Management (Division) pursuant to Rule 62B-33.014, Florida Administrative Code. A list of activities seaward of the CCCL that are exempt from CCCL permitting requirements is contained in Rule 62B-33.004, Florida Administrative Code, and Section 161.053(11), Florida Statutes. You may contact the Division directly by mail at 2600 Blair Stone Road, Mail Station #3500, Tallahassee, Florida 32399-2400, by phone at 850/245-7665, or by fax at 850/245-8356.

This Order does not authorize the construction of permanent structures that did not exist prior to the emergency, nor does it authorize beach scraping performed by itself or in association with any other activities. In addition, activities that extend onto state owned lands of Florida seaward of the mean high-water line that would typically require a permit pursuant to Sections 161.041 and/or 161.055, Florida Statutes, (i.e., regulated under the Joint Coastal Permit program (JCP)) are not authorized under this subsection. JCP activities are addressed separately in subsection C.4. of this Order.

a. Activities Undertaken by Local Governments, the Department's Division of Recreation and Parks, Florida Department of Transportation, and Utility Companies

The following activities may be undertaken by local governments, the Department's Division of Recreation and Parks, Florida Department of Transportation, and utility companies to protect, repair, or replace structures and property without notice to the Department or water management district, subject to the limitations below. Work performed under paragraph C.3.a. must be completed by November 1, 2017.

(1) Removal of Hurricane-generated debris. Prior to removing Hurricane-generated debris, and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on-site. To prevent debris from becoming buried, all Hurricane-generated debris shall be removed prior to conducting any fill activities.

(2) The repair of the following public facilities: utilities, roads, and beach access ramps.

(3) Return of sand to the beach and dune system that has been deposited upland by the Hurricane, and restoration of a damaged dune system using beach

compatible sand from an upland source. The fill material shall not cover any Hurricane-generated debris or construction debris. All fill material shall be sand that is similar to the pre-Hurricane beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter. No sand may be obtained from the beach or below the mean high water line seaward of the CCCL without specific written authorization from the Department.

b. Activities Requiring Local Authorization

Local governments are authorized to issue permits in lieu of Department permits to private and public property owners for the activities listed below. Local governments shall notify the Department in writing within three (3) business days of permits issued under this section. Work authorized by local governments must be completed within ninety (90) days of the expiration of this Order.

(1) Temporary or remedial activities that are necessary to secure structures in order to remove safety hazards and prevent further damage or collapse of foundations.

(2) Temporary wooden retaining walls, cantilever sheetpile walls (without concrete caps, tiebacks, or other reinforcement), sandbags less than 100 lbs. filled bag, or similar structures. Temporary armoring must be removed within sixty (60) days of installation, or the individual must seek authorization from the Department within sixty (60) days of installation, in order to keep the temporary armoring in place.

Pursuant to Section 161.085(3), Florida Statutes, this Order does not authorize local governments to permit geotextile containers as the core of a reconstructed dune for the purposes of temporary armoring.

(3) Repair or replacement of minor ancillary structures (such as stairs, landings, and HVAC platforms) and services utilities that are associated with the existing habitable structure. The repair of minor ancillary structures or service utilities shall not exceed the size of the original structure or service utility damaged or destroyed by the Hurricane. Repair of surviving beach/dune walkovers is authorized provided the structure is substantially intact and the repair allows for adjustments to be made to the seaward terminus of the walkover if necessary to accommodate changes in the shoreline topography and native salt-resistant vegetation patterns resulting from the post-Hurricane recovery of the beach and dune system.

(4) Permanent repair of foundations for buildings that have not been substantially damaged.

(5) The replacement or repair of caps and anchoring systems (or tiebacks) for seawalls or bulkheads.

(6) Restoration of a damaged dune system using beach compatible sand from an upland source.

All fill material shall be sand that is similar to the pre-Hurricane beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter. No sand may be obtained from the beach or below mean high water seaward of the CCCL without specific written authorization from the Department.

(7) Return of sand to the beach dune system which has been deposited upland by the Hurricane.

The recovered fill material shall be free of debris and not cover any Hurricane-generated debris or construction debris.

c. **Other Activities**

(1) Actions taken by local governments, the Department's Division of Recreation and Parks, Florida Department of Transportation, and utility companies under paragraph C.3.a., and actions taken by local governments under paragraph C.3.b. of this Order, do not require additional permits from the Department.

(2) Subsection C.3. does not authorize the following activities:

(a) Permanent repair of foundations of major structures which have been substantially damaged;

(b) Rebuilding of, or substantial improvements to, major structures;

(c) The repair or reconstruction of coastal or shore protection structures except

as allowed under subparagraph C.3.b.(5).; or

(d) Replacement of walkover structures, retaining walls, decks, gazebos, and other similar structures.

(e) Local governments to permit geotextile containers as the core of a reconstructed dune for the purposes of temporary armoring.

(3) Activities not covered by subsection C.3. of this Order may require a permit from the Department under Section 161.053, Florida Statutes, and Chapters 62B-33 or 62B-34, Florida Administrative Code. For more information, please contact the Division of Water Resource Management by mail at 2600 Blair Stone Road, Mail Station #3500, Tallahassee, Florida 32399-2400, by phone at 850/245-7665, or by fax at 850/245-8356.

4. **Joint Coastal Permit Activities**

This subsection applies to certain activities along the natural sandy beaches of the Atlantic Ocean or the Gulf of Mexico that extend onto sovereignty lands of Florida, seaward of the mean high-water line (MHWL), and are likely to have a material physical effect on the coastal system or natural beach and inlet processes, i.e., activities that are regulated under the JCP program, pursuant to Sections 161.041 and/or 161.055, Florida Statutes.

a. In lieu of a JCP for activities summarized above, federal, state, or local governments may apply to the Beaches, Inlets and Ports Program (Bureau) for emergency authorizations to alleviate hazardous conditions resulting from the Hurricane that pose an immediate danger to life or limb, including sudden and unpredictable hazards to navigation. In order to be eligible for an emergency authorization under subsection C.4. of this Order, an applicant must meet the following criteria:

(1) The application must be received by the Bureau within thirty (30) days of issuance of the Department's Order at the following email address: BIPP@dep.state.fl.us

(2) The hazardous conditions are a result of the Hurricane identified in the Department's Order and did not exist prior to the Hurricane.

(3) The proposed measures are limited to the minimum amount necessary to alleviate the hazardous conditions by temporarily stabilizing the structure or clearing the channel, until a JCP application can be processed to address the long-term repair;

(4) Fill material shall not extend seaward of the MHWL that existed immediately before the Hurricane;

(5) Navigational dredging shall not exceed channel depths that existed immediately before the Hurricane;

(6) Reconstruction of non-water dependent structures on sovereign submerged lands is prohibited;

(7) Fill may only be placed seaward of the MHWL to temporarily stabilize an upland structure, if that structure is in danger of imminent collapse and that structure was located behind the primary dune line prior to the Hurricane;

(8) The placement of fill may only extend the MHWL seaward of the current (post-Hurricane) location if the applicant provides proof that the riparian owner(s) has obtained a disclaimer from the Department's Division of State Lands, under Rule 18-21.019, Florida Administrative Code, for the proposed project site, a memorandum from the Department's Division of State Lands acknowledging the storm-related occurrence of avulsion for the proposed project site, or documentation from the Department that a valid erosion control line has been established at the fill site.

(9) Any fill material placed on the beach must meet the criteria for beach-quality sand in Section 62B-41.007(2)(j), Florida Administrative Code;

(10) The proposed measures must not cause water quality violations outside of the mixing zone, established pursuant to Rule 62-4.244, Florida Administrative Code; and

(11) The proposed measures must not adversely affect persistent hardbottom communities, seagrass communities, or functional marine turtle nesting habitat, and shall not contribute to erosion of adjacent properties.

b. Emergency authorizations shall expire ninety (90) days after issuance.

c. Application fees and noticing requirements are waived for projects that are eligible for this emergency authorization.

d. Activities not covered by subsection C.4. of this Order may require a JCP permit from the Department under Sections 161.041 or 161.055, Florida Statutes, and Rule 62B-49, Florida Administrative Code. For more information, please contact the Bureau by email at BIPP@dep.state.fl.us or by phone at 850/245-7593. If the activities are associated with the repair of damage from the Hurricane identified in the Department's Order, and the applicant can demonstrate that expeditious processing of the JCP application is necessary to meet state or federal recovery efforts, including funding deadlines, the Department may deviate from the standard procedures as follows:

(1) Processing fees may be waived; and

(2) The requirement to publish a Notice of Receipt of Application and a Notice of Intended Agency Action pursuant to Rule 62B-49.005(8), Florida Administrative Code, may be waived, along with the associated 14-day waiting period.

(3) Pursuant to Rule 62B-49.005(9), Florida Administrative Code, agency actions under paragraph C.4.d. are still subject to rights under Chapter 120, Florida Statutes.

5. NPDES Stormwater Construction Generic Permit

This subsection applies to any construction activity authorized by this Order that would require coverage under the Generic Permit for the Discharge of Stormwater Associated with Large and Small Construction Activities pursuant to Rule 62-621.300(4), Florida Administrative Code. For these construction projects, operators of the sites, and their licensed engineers and subcontractors, are authorized to make all necessary repairs to restore essential services and repair or replace (as necessary) all

structures to their pre-Hurricane permitted or registered condition without prior notice to the Department. All best management practices must be in accordance with the guidelines and specifications of the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual*, (Florida Department of Transportation and Florida Department of Environmental Protection, 2013, https://www.flrules.org/Gateway/reference.asp?No=Ref-04227). Within thirty (30) days of commencing the work of such repair or replacement, however, the owner or operator shall submit to the Department a completed Notice of Intent to Use Generic Permit for Stormwater Discharge from Large and Small Construction Activities [Form Number 62-621.300(4)(b)].

6. **General Conditions**

a. All activities conducted under subsections C.2., C.3., and C.4. of this Order shall be performed using appropriate best management practices in accordance with the guidelines and specifications in Chapter 6 of the *Florida Land Development Manual: A Guide to Sound Land and Water Management*, Florida Department of Environmental Regulation (1988). For activities conducted in or discharging to wetlands or other surface waters, best management practices include properly installed and maintained erosion and turbidity control devices to prevent erosion and shoaling, control turbidity, prevent violations of state water quality standards, and protect the functions provided by wetlands and other surface waters to fish, wildlife, and listed species.

b. The authorizations in subsections C.2., C.3., and C.4. of this Order shall not apply to structures and associated activities that were not legally existing or

otherwise properly authorized by all applicable agencies before the passage of the Hurricane.

c. Applicable environmental resource, surface water management, dredge and fill, CCCL, and JCP permits shall be required following provisions of statute and rule for other activities not authorized in this Order that do not otherwise qualify as an exempt activity under statute or rule.

d. The nature, timing, and sequence of construction authorized under this Order shall be conducted in such a manner as to provide protection to, and so as to not disturb, native salt-resistant vegetation and listed species and their habitat, including threatened or endangered sea turtles, endangered manatees, endangered beach mice, endangered plant communities, and migratory shorebirds. If activities conducted under subsection C.3. of this Order occur during the marine turtle nesting season (March 1 through October 31 in Brevard, Indian River, St. Lucie, Martin, and Broward counties, May 1 through October 31 in all other coastal counties within the state), such activities must be coordinated with the Florida Fish and Wildlife Conservation Commission's Imperiled Species Management Section to ensure that all activities comply with state and federal requirements for the protection of sea turtles, their nests, hatchlings, and nesting habitat.

e. Nothing in this Order authorizes the taking, attempted taking, pursuing, harassing, capturing, or killing of any species (or the nests or eggs of any species) listed under Rule 68A-27, Florida Administrative Code, or under the Federal Endangered Species Act.

f. Persons are advised that all structures that are rebuilt should be rebuilt in accordance with all applicable local, state, and federal building standards and requirements of the Federal Emergency Management Agency.

g. It is recommended that, where possible, owners of property should maintain documentation (such as photos) of the condition of the structures or lands as they existed prior to initiating any activities authorized under this Order, and should provide such documentation to the Department if requested to do so.

h. Activities authorized under subsection C.2. of this Order must be completed as follows:

(1) By November 1, 2017 for activities that qualify under the No Notice provisions of paragraph C.2.a. of this Order;

(2) By the date specified in the field authorization for activities that qualify under the provisions of subparagraph C.2.b.(1). of this Order. However, the deadline for completing such activities may be extended if a written request with accompanying documentation as described below is submitted by the person(s) authorized in the field authorization and received by the District Office of the Department that issued the field authorization at least thirty (30) days prior to expiration of the field authorization. Such request must be accompanied by a statement that contractors or supplies are not available to complete the work, or that additional time is needed to obtain any required authorization from the U.S. Army Corps of Engineers. The permittee should maintain a list of contractors that have been contacted and a record of supplies that are on backorder as needed to demonstrate compliance with this provision.

7. **Authorization to Use State Owned Submerged Lands**

The Department has been delegated by the Board of Trustees of the Internal Improvement Trust Fund the authority to grant the following authorizations to use state owned submerged lands, that is, lands lying waterward of the line of mean high water, erosion control line, or ordinary high water line, in association with the structure or activity subject to repair, restoration, removal, or replacement authorized in this section.

a. Except as provided in paragraphs C.6.b., c., and d., and subsection D.1. of this Order, activities authorized under this Order involving the repair, replacement, or restoration of the activities and structures, and the removal of debris located on submerged lands owned by the state that do not qualify for consent by rule under Section 18-21.005(1)(b), Florida Administrative Code, are hereby granted a Letter of Consent under Section 18-21.005(1)(c), Florida Administrative Code, provided:

(1) Such repair, restoration, replacement, or removal is conducted in accordance with the terms, conditions, and limitations of this Order;

(2) The structure or activity subject to repair, restoration, or replacement was authorized by the Board of Trustees of the Internal Improvement Trust Fund prior to the Hurricane, or was otherwise legally existing immediately prior to the Hurricane;

(3) The activities are conducted solely to repair, restore, or replace structures or land that was damaged by the Hurricane, or to remove debris resulting solely from the Hurricane; and

(4) The structures and activities are repaired, restored, or replaced in the same location and configuration as was authorized by the Board of Trustees of the Internal Improvement Trust Fund or which otherwise legally existed immediately prior to the Hurricane.

(5) All the terms and conditions of Rule 18-21.005(1)(b) [Consent by Rule] or 18-21.005(1)(c) [Letter of Consent], Florida Administrative Code, as applicable, are met (including certain restrictions for activities performed within aquatic preserves and Monroe County), and provided that activities that require an easement under Rule 18-21.005(1)(f), Florida Administrative Code, must obtain the applicable state owned submerged lands easement under Chapter 18-21, Florida Administrative Code, within one year of expiration of this Order. This Order does not limit the provisions of those statutory and rule provisions.

a. Non-water dependent structures, grandfathered, are not authorized to be repaired, restored, or replaced when more than 50 percent of the structure or activity is lost (based on the cost to repair, restore, or replace the structure or activity);

b. Water dependent structures that were legally existing immediately before the Hurricane but not in conformance with the current criteria of Chapters 18-18, 18-20, or 18-21, Florida Administrative Code, as applicable, may be repaired, restored, or replaced to the footprint that existed immediately before the Hurricane, but shall, to the greatest extent practicable, be repaired, restored, or replaced to meet the current criteria of Chapters 18-18, 18-20, and 18-21, Florida Administrative Code, as applicable, with respect to design features such as the elevation of decking surfaces and spacing of deck planking.

c. This Order does not authorize the reconstruction or repair of unauthorized structures.

8. Water and Wastewater Plants and Collection and Distribution Systems

a. Owners and operators of water and wastewater plants and collection and distribution systems, and their licensed engineers and contractors, are authorized to make all necessary repairs to restore essential services and repair or replace (as necessary) all structures, equipment, and appurtenances of the plants and systems to their pre-Hurricane permitted or registered condition without prior notice to the Department. Within thirty (30) days of commencing the work of such repair or replacement, however, the owner or operator shall notify the Department in writing, describing the nature of the work, giving its DEP Facility I.D. for the location, and providing the name, address, and telephone number of the representative of the owner or operator to contact concerning the work.

b. Owners and operators of underground injection control Class V Group 6 stormwater and lake level control wells in existence and functioning immediately before the Hurricane are authorized, without prior permission by the Department, to lower the intake structure to allow a greater volume of lake water to flow down the wells when not to do so would result in immediate flooding of structures not usually inundated by such lake waters. Within three (3) days of lowering said structures, written notice shall be provided to the District Office of the Department in which the structure is located.

9. Suspension of Fees

For those activities noted above, subject to the limitations, duration, and other provisions of this Order, the following application fee, base fee, and minimal annual lease fee requirements of Sections 161.041, 161.053, 161.0535, 161.055, and 373.109, Florida Statutes, and Chapters 18-18, 18-20, 18-21, and 62-4, Florida Administrative Code, shall be suspended as follows:

a. For structures and activities authorized under paragraphs C.2.a. or C.3.a. of this Order, the lessee may submit a written request to the Division of State Lands (at 3900 Commonwealth Boulevard, MS #130, Tallahassee, Florida 32399-3000) to waive applicable lease fees. In such cases, the owner must identify and document (such as with currently-dated photographs) the area (in square feet) of the structure or facility that is no longer useable. When such documentation is received and deemed sufficient, lease fees will be waived, but only for that portion of the structure that is no longer useable.

b. When the restoration or replacement of individual structures (such as a dock or pier) or entire facilities (such as marinas) on state owned submerged lands that are completely destroyed is authorized by a field authorization under paragraph C.2.b. of this Order, applicable lease fees will be waived for the duration described in paragraph c. below.

c. Lease fees that are waived under paragraphs a. or b. above, will be waived only for the duration of this Order (including subsequent extensions thereto) unless otherwise provided in a field authorization issued under paragraph C.2.b. of this Order, or until the repairs, restoration, or replacement commences, whichever is earlier. The duration of the waiver of suspension of lease fees may be extended beyond the duration of this Order (including subsequent extensions thereto) or beyond the date specified in a field authorization issued under paragraph C.2.b. of this Order, upon a written request by the lessee to extend the waiver of the lease fees. Such request must be received by the Division of State Lands before the expiration of this Order (or extensions thereto), or before the date specified in the field authorization

(whichever date is later), and must be accompanied by a signed statement that construction has not yet commenced because contractors or supplies are not available to commence the necessary repairs, restoration, or replacement, or because additional time is needed to obtain any required authorization from the U.S. Army Corps of Engineers or local government. Such request for extension of the waiver of lease fees must also contain a reasonable schedule for when repair, restoration, or replacement will commence.

d. In all cases where lease fees are waived under paragraph a.(1) above, the lessee must notify the Division of State Lands, at the address stated in paragraph a., above, of the time repair, restoration, or replacement construction commenced.

D. GENERAL PROVISIONS

1. General Limitations

The Department issues this Emergency Final Order solely to address the emergency created by the Hurricane. This Order shall not be construed to authorize any activity within the jurisdiction of the Department except in accordance with the express terms of this Order. Under no circumstances shall anything contained in this Order be construed to authorize the repair, replacement, or reconstruction of any type of unauthorized or illegal structure, habitable, or otherwise. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

2. Suspension of Statutes and Rules

Within the Emergency Area, the requirements and effects of statutes and rules which conflict with the provisions of this Order are suspended to the extent necessary to implement this Order.

To the extent that any requirement to obtain a permit, lease, consent of use, or other authorization is waived by this Order, it should also be construed that the procedural requirements for obtaining such permit, lease, consent of use, or other authorization, including requirements for fees and publication of notices, are suspended for the duration of this Order, except as provided in subsection C.8.

3. Review of Requests for Field Authorizations

It is the intent of the Department to act on requests for field authorizations in a timely and expeditious manner. The Department may require the submission of additional information as is necessary.

4. Other Authorizations Required

This Order only provides relief from the specific regulatory and proprietary requirements addressed herein for the duration of the Order, and does not provide relief from the requirements of other federal, state, water management districts, and local agencies. This Order therefore does not negate the need for the property owner to obtain any other required permits or authorizations, nor from the need to comply with all the requirements of those agencies. This Order does not provide relief from any of the requirements of Chapter 471, Florida Statutes, regarding professional engineering.

Activities subject to federal consistency review that are emergency actions necessary for the repair of immediate, demonstrable threats to public health or safety are consistent with the Florida Coastal Management Program if conducted in strict conformance with this Order.

5. Extension of time to comply with specified deadlines

For facilities and activities regulated by the Department in the Emergency Area, this Order extends by thirty (30) days the time to comply with the following specified deadlines that occur between the date of issuance of this Order and the expiration of this Order:

a. The time deadlines to conduct or report periodic monitoring or any other similar monitoring that is required by a permit, lease, easement, consent of use, letter of consent, consent order, consent agreement, administrative order, or other authorization under Chapters 161, 253, 258, 373, 376, or 403, Florida Statutes, and rules adopted thereunder, except for monitoring required by air permits issued under Title IV or V of the Clean Air Act or under the Prevention of Significant Deterioration (PSD) program;

b. The time deadlines to file an application for an extension of permit duration or renewal of an existing permit, lease, easement, consent of use, letter of consent, or other authorization under Chapters 161, 253, 258, 373, 376, or 403, Florida Statutes, and rules adopted thereunder, except for air permits issued under Title V of the Clean Air Act;

c. The time deadlines to file an application for an operation permit under Chapters 161, 253, 258, 373, 376, or 403, Florida Statutes, and rules adopted thereunder, except for air permits issued under Title V of the Clean Air Act;

d. The expiration date for an existing permit, lease, consent of use, or other authorization under Chapters 161, 253, 258, 373, 376, or 403, Florida Statutes, and rules adopted thereunder, except for air permits issued under Title V of the Clean Air Act; and

e. The time deadlines to obtain a permit for and commence construction of the initial phase of a system for which a conceptual permit was issued pursuant to Part IV of Chapter 373, Florida Statutes, or Sections 403.91 – 403.929, Florida Statutes, and rules adopted thereunder.

6. Permit Extensions During States of Emergency

The public is advised that Section 252.363, Florida Statutes, provides for tolling and extending the expiration dates of certain permits and other authorizations following the declaration of a state of emergency. Affected permits include authorizations granted by the Department, water management district, or delegated local government, pursuant to part IV of Chapter 373, Florida Statutes, and Joint Coastal Permits issued under Rule 62B-49, Florida Administrative Code.

The extension provisions of Section 252.363, Florida Statutes, do not apply to:

a. Permits that:

(1) Authorize activities that occur outside the geographic area affected by the declaration of a state of emergency;

(2) Include authorization under a programmatic or regional general permit issued by the U.S. Army Corps of Engineers;

(3) Are held by a permittee in significant non-compliance; or

(4) Are subject to a court order specifying an expiration date or buildout date that would be in conflict with the extensions granted in this section.

b. State owned submerged lands authorizations under Chapters 253 or 258, Florida Statutes;

c. Formal determinations of the landward extent of wetlands and other surface

waters; or

d. Verifications of exemptions from permitting criteria.

To receive an extension under Section 252.363, Florida Statutes, the holder of a valid, qualifying permit must notify the authorizing agency in writing within ninety (90) days of the expiration of a declaration of emergency, as established in a Governor's Executive Order. The duration of the tolled period remaining to exercise the rights under a permit shall be equal to six (6) months in addition to the duration of the declaration of emergency.

7. Deadlines for Agency Actions

For each of the following offices, any deadlines specified in statutes, rules, agreements, or Department orders, under which the Department is required by law to take action within a specified time period, and under which failure by the Department to timely take such action could result in any type of default binding on the Department, are hereby suspended and tolled for a period of seven days from the date of this Order, provided such deadline had not expired as of the effective date of this Order:

a. Each Department office and delegated local program that sustains, within its geographic boundaries, any significant physical damage occurring as a direct result of the Hurricane. This includes Department offices located outside the impacted area that perform any of their duties in the impacted area.

b. Any office of the Department not directly impacted by the Hurricane if that office has deployed staff to any District Office of the Department or delegated local program specified above, or to any water management district office in an impacted

area, to assist in Hurricane relief efforts or to supplement the normal staff in those impacted offices.

8. Expiration Date

This Emergency Final Order shall take effect immediately upon execution, and shall expire on November 2, 2016 unless modified or extended by further order.

9. Violation of Conditions of Emergency Final Order

Failure to comply with any condition set forth in this Order shall constitute a violation of a Department Final Order under Chapters 161, 253, 258, 373, 376, and 403, Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

10. Applicability to Delegated Programs

The provisions of this Order apply in those cases where a water management district, local government, or other entity is acting for the Department in accordance with a delegation agreement, operating agreement, or contract. Such water management district, local government, or other entity shall comply with the terms of this Order to the extent that it is acting as an agent of the Department. This Order does not apply in those cases where a water management district, local government, or other entity is acting under its own independent authority.

NOTICE OF RIGHTS

Pursuant to Section 120.569(2)(n), Florida Statutes, any party adversely affected by this Order has the right to seek an injunction of this Order in circuit court or judicial review of it under Section 120.68, Florida Statutes. Judicial review must be sought by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure,

with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal, accompanied by the applicable filing fees, with the appropriate district court of appeal. The notice of appeal must be filed within thirty (30) days after this Order is filed with the Clerk of the Department.

DONE AND ORDERED on this 5th day of October, 2016, in Tallahassee, Florida.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Jonathan P. Steverson, Secretary

3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

for

CLERK

DATE: 10/05/2016